

11th July 1933.

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Present :

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Reading.  
Earl of Derby.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.  
Major Attlee.

Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

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The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaqat Hayat-Khan.  
Sir Akbar Hydari.  
Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
Sir P. Pattani.  
Mr. Y. Thombare.

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## BRITISH INDIAN REPRESENTATIVES.

His Highness The Aga Khan.  
 Sir C. P. Ranaswami Aiyar.  
 Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. Rangaswami Iyengar.  
 Mr. M. R. Jayakar.  
 Mr. N. M. Joshi.

Begum Shah Nawaz.  
 Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Tej Bahadur Sapru.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Sir N. N. Sircar.  
 Sir Purshotamdas Thakurdas.  
 Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.I.E., K.C.S.I., and Sir FINDLATER STEWART, K.C.I.E., C.S.I., are called in and examined.

*Chairman.*

5613. Sir Samuel Hoare, you are Secretary of State for India. You are accompanied to-day by Sir Malcolm Hailey, who is Governor of the United Provinces, and by Sir Findlater Stewart, who is Permanent Under-Secretary of the India Office. I imagine that in the main it will best forward the course of business if your examination is carried on upon Command Paper 4268 of 1933, which embodies the proposals for Indian Constitutional Reforms, and is known as the White Paper?—(Sir Samuel Hoare.) Yes, please.

5614. Have you any statement which you desire to make at this stage?—The only observation I should like to make, my Lord Chairman, before I deal with the questions is to state that the White Paper is the result of a long series of discussions and investigations beginning indeed with enquiries before the War, going on with enquiries connected with the Government of India Act, then again connected with the enquiries made by the Statutory Commission, and connected with all the investigations that have taken place since then at successive Round Table Conferences and at successive Inquiries that have taken place as a result of those Inquiries. Moreover, in addition to that it is the result of almost incessant correspondence between the Government here and the Government of India, and between the Government here and the Government of India and the Provincial Governments. I make this observation in order that it should be quite clear that the White Paper has not been prepared without careful thought, but that it is the

result of this long series of deliberations and discussions.

*Marquess of Salisbury.*

5615. Sir Samuel Hoare, the difficulty, of course, in the system of the White Paper, is that there is not one system of administration necessarily, I mean, but there is the Government, and then there are the special responsibilities of the Governor, and there is the Reserved Services of the Governor General, and my first question to you would be what staff do you contemplate must be provided for the Governor and the Governor General to carry out the special responsibilities and the Reserved Departments?—We contemplate, taking the Provincial Governor first, that he should have whatever staff he requires. It is very difficult to state in explicit terms what that staff should be, for this reason, that one Province differs from another Province, and that in one Province the Governor may require more staff than he requires in another, but, generally speaking, it is implicit in our proposals that the Governor should have what staff he requires.

5616. Would they be in the nature of personal staff, or would they be drawn from the Indian Civil Service?—The kind of staff I have in mind is a staff drawn from the Indian Civil Service, no doubt supplemented by a personal A.D.C., or someone of that kind.

5617. But you do contemplate, in the case of each Governor, and even more in the case of the Governor General, a certain staff to carry out the obligations of his special responsibilities?—Yes.

5618. You will remember that it has been a matter of discussion amongst us

whether there ought to be in the Governments, in addition to the ordinary responsible Ministers, a nominated Minister, and I think it would be useful to the Committee if we knew how the Government regard that proposal? Of course it has special reference to law and order, but in our discussions it has not been confined to law and order?— Might I be clear before I answer that question as to what kind of nominated Minister Lord Salisbury has in mind? Does he have in mind an official who is not responsible to the Legislature, or a nominated Minister who is responsible to the Legislature?

5619. I meant a nominated Minister who is not responsible to the Legislature, that is to say, who is independent of the Legislature?—The Government have very fully considered that proposal, and we have come to the conclusion that it would be a mistake to have a Minister of that kind for more than one reason. We think, first of all, it would concentrate upon that Minister all the criticism of the Assembly; he would be regarded as the representative of an alien power. Secondly, we do genuinely believe that it is most important to stimulate the feeling of responsibility in the Government, and in the Assembly, and we feel the existence of a Minister of that kind would really undermine the basis of responsibility which is the basis of our proposals so far as they are concerned with the Provincial Governments.

5620. Do you not think that the difficulties about law and order which have emerged in our discussions make any difference in the answer which you have made?—No, I do not.

5621. Even in Bengal?—No, subject to the other provisions in the White Paper under which we give implicit powers to any Governor to intervene in the event of grave menace to order or tranquillity.

5622. That brings me to the question of the formation of the responsible Government. I do not quite understand from, I think it is paragraph 66 or 67, whether it is contemplated that there should be a Prime Minister in the local governments, and a Prime Minister in the Central Government?—We have felt that these kinds of things must grow up, and that we cannot prescribe in detail

in a Constitution Act exactly how these Provincial Governments will work. In no case, except the case of the Irish Free State Constitution, has it been definitely stated how a Government should work. It has been left to grow up organically, and we felt that it might be that in certain Provinces there would be a Prime Minister at once; in other Provinces there might not. As far as we are concerned, we look forward to a time when procedure will conform with the procedure in this country, but we do not think we can prescribe it at the outset.

5623. You mention on the third line of page 55 "the person who, in his judgment is likely to command the largest following in the Legislature." That comes very near a Prime Minister?—It does.

5624. And it is contemplated that the Government should be formed of persons in whom this person who is likely to command the largest following has confidence?—Yes.

5625. He will, to some extent, help to select his colleagues?—Yes.

5626. Will the responsibility of the Government be joint?—My answer to that question is very much the answer I have just given about the Prime Minister. We should like to see the responsibility joint. At the same time we do not think we can prescribe it. Joint responsibility never has been prescribed in any Constitution Act in the British Empire, except in the case of the Irish Free State. Moreover, we do see difficulties in India that had better not be ignored, namely, the fact that the Governor has got to consider the representation of minorities in forming his Government, and in the case of the Governor-General he has also got to consider the representation of the States. That makes it more than ever difficult for us to prescribe in so many words that responsibility is to be collective. We hope it will be collective, but we do not think any good will be done by stating, in so many words that it is to be collective.

5627. Of course, if minorities are represented, does the Secretary of State mean political minorities or religious minorities?—I mean minorities as we always define them in dealing with Indian affairs, namely, the principal religious minorities.

5628. The only difficulty I see about that (and I put the question) is what

will happen if one particular Minister loses the confidence of the Legislature. Of course, under our system the Government all moves together?—It is very difficult to say exactly what would happen. It would depend so much upon the importance of the Minister and how much support he had amongst his own colleagues. I can imagine the Government making it a case of want of confidence.

5629. That would apply to the whole Government, of course—the want of confidence?—The whole Government. I can also imagine that if the Government had not any very great opinion of the Minister, they might make the Minister resign, but I think that that essentially is a case that can only be dealt with when it arises.

5630. What will be the method, as it were, by which the Assembly would signify its want of confidence in a particular Minister? In our system it is sometimes done by moving the reduction of his vote, but that is not allowed, I understand, in this White Paper?—We felt that there it was better to preclude a vote of that kind for this reason: We did not desire a whole series of votes for the reductions of Ministers' salaries constantly going on in the Provincial Assemblies. We contemplated, therefore, that if the Assembly wished to show its want of confidence in a particular Minister it would either withhold supply from the Government, or it would put down a vote of censure, or anyhow some such resolution, as would be treated as a vote of confidence by the Government.

5631. I do not want to press you unduly, Sir Samuel, but a vote of confidence would apply to the whole Government?—Yes.

5632. And if a Government is joint then that is reasonable, but supposing the Government consists of a number of different Ministers who do not altogether agree with each other, how will that be worked out?—I am afraid it must be decided when the case arises. I do not see how else it can be decided. If the Assembly feels strongly about it, the Assembly could put down either a general vote of want of confidence or could put down a vote expressing its want of confidence in a particular Minister, and the Government would then have to decide whether it would

treat it as a collective vote of want of confidence upon itself or as a vote directed against a particular Minister, whom they could sacrifice if they wished to.

5633. It seems to me very difficult to work a system of that kind unless there was a Prime Minister who could make a decision?—I think that may very well be so and I think we shall see in many cases, perhaps in all cases, there will be a Prime Minister.

5634. Or is it the Governor whom the Secretary of State expects to make the decision?—I think it must depend. In the case where there is a Prime Minister the Prime Minister no doubt would take the first decision upon a case of that kind. In a case where there is no accredited head of the Government, I should think then the responsibility might fall upon the Governor.

Marquess of *Salisbury*.] I do not want to ask any more questions on that particular section.

Sir *Austen Chamberlain*.] May I interpose a question with Lord *Salisbury's* leave?

Marquess of *Salisbury*.] Yes.

Sir *Austen Chamberlain*.

5635. I wish the Secretary of State would apply Lord *Salisbury's* question to the particular case of Law and Order. Is it contemplated that Law and Order should be the joint responsibility of the Government or that it might be treated as the personal responsibility of one Minister alone?—We should hope, and we should do everything in our power, to bring it about that the responsibility should be joint. The Simon Commission laid great stress upon the need of making responsibility as collective as possible. It is not because we do not wish collective responsibility to exist that we have not prescribed it, but it is because we feel that it is a matter of organic growth rather than of prescription in a particular statute.

Marquess of *Salisbury*.

5636. Then in respect of Law and Order, you would expect it to be joint at the outset?—I should hope that everything would be joint.

5637. You have told the Committee, have you not, that you expect all this to grow, but Law and Order is an urgent matter. There is not much time for growing. We want to know what is going to happen at once?—Yes, certainly, our desire would be that the responsibility should be collective primarily no doubt upon the shoulders of the Minister, but ultimately upon the Government as a whole.

5638. That brings us to Law and Order. I believe the Government are going to furnish us with statistics as to terrorism. Is that so?—We certainly can if the Committee wishes.

Marquess of *Salisbury*.] The Secretary of State may not have been present when the question arose previously.

*Chairman*.] My noble friend is thinking of the occasion on which a witness undertook to supply us with those statistics.

Marquess of *Salisbury*.] The witness may be in a position to do so, or he may not. It was the European Association witness.

*Witness*.] I see ; but if Lord Salisbury would tell us exactly what he would like, we would try to provide it.

5639. Apparently the matter has just been handed in. I do not know whether that deals with anything like anarchical conspiracy as well as the ordinary outrages?—I do not think I have this note of which Lord Salisbury speaks.

5640. I will not press the matter. Perhaps the Secretary of State will make a note of it. I think the Committee ought to be taken into the confidence of the Government, if I may say so, as to the exact condition of things in Bengal and elsewhere than Bengal, so far as it exists elsewhere?—I am not quite clear ; I am only too anxious to do what Lord Salisbury asks, but I am not quite clear exactly what he wants.

5641. I want a picture of what terrorism amounts to in Bengal. That would include, of course, the political outrages and it would include also anything like evidence of an organised anarchical effort. Because, after all, if we are going to deal with Law and Order we must know what the subject-matter is?—Yes. You restrict it to political movements, not to communal

movements? Do you bring in Communist movements in addition to political movements against the British Empire?

5642. I meant certainly primarily the political movement?—We will certainly see what we can do to provide the Committee with what they ask.

5643. I do not want to revert to an incident which took place earlier in our Proceedings, but, of course, it is very important that the Committee should know how the responsible Police authorities of the Bengal regard the Terrorist condition and any political conspiracy. There has been a certain amount of discussion in the Committee, but there has been no evidence laid before the Committee on that head, as to how the Bengal Police regard it?—I have, of course, been in constant communication with the Governor of Bengal upon all these very important issues, and I know that the Governor has been in very close touch with his Inspector-General of Police. When, therefore, I say that in my view Law and Order should not be reserved as such, even in Bengal, it is not without full consultation with the Governor, who is, perhaps, more closely interested in the administration of the Police than anybody else.

5644. I am sure of that, of course, and I am not going to press the Secretary of State to an answer, but I think it would really be proper, if I may venture to give my opinion, that we should have a Witness before us representing the Police in Bengal, or knowing exactly what their attitude of mind is towards this particular subject, and if the Secretary of State says he would rather not answer at this moment, I will not press the question?—I think the answer I would make now is that I should very much deplore serving officials giving evidence before the Committee at all, and, if the Committee decided that they should give evidence, I should still say that it is very difficult to pick out one particular serving officer who may hold opinions upon a particular issue, and not to give other serving officers who may not agree with him the opportunity of rebutting his evidence.

5645. I shall not pursue it, because I said I would not, but I hope the Secretary of State will think about it a little. Then as regards the C.I.D., would the

Secretary of State like to say anything in evidence in respect of them alone?—Would Lord Salisbury make his question a little bit more explicit? I am not quite sure what it is that he wishes to ask me.

5646. There are two questions which arise. The first question is: Is the C.I.D. to be reserved from the authority of the responsible Governor in each Province? A further question is: Shall the C.I.D. be an All-India Service under the Governor-General alone?—There is the further question, if I might put it to Lord Salisbury, before I answer his two questions: What exactly is it that he means by the C.I.D.? The C.I.D. in the minds of many people is the Secret Intelligence Branch. As a matter of fact, the C.I.D. in India is a much bigger organisation than that, and the branch dealing with Terrorism is the small special Intelligence Branch. Does Lord Salisbury mean the C.I.D. generally, that is to say, the big organisation in direct touch with the ordinary Police administration, and with the day to day Police administration, or does he mean the small special organisation dealing with Terrorism?

5647. We should all be very much guided by the views of the Secretary of State in that matter, but I think I had in my mind the special reference to the Terrorist organisation?—The difficulty with the big C.I.D. organisation is that it is so much tied up with the ordinary day to day criminal work of the Police, that, administratively, it would seem almost impossible to segregate it from the Police administration generally. With regard to the Special Intelligence Branch, that is to say, the organisation dealing with Terrorism in Bengal, there, I think, a segregation may, administratively, be less difficult, and on that account we have in the White Paper proposals given the Governors implicit powers, though not explicit powers, at a time of emergency to make special provision for an organisation of that kind.

5648. You say you have given him power or you would give him power?—We have under the White Paper given him implicit powers to take action when he thinks fit.

5649. I am not quite sure that the Committee knows what you mean by implicit powers?—If Lord Salisbury would look at paragraph 71, on page 56,

of the White Paper, under paragraph 71 a Governor could deal with the Special Intelligence Branch in whatever way he thought fit.

5650. And you think that the power conferred by that paragraph would be sufficient for him to withdraw the Special Branch from the jurisdiction of the responsible Minister, and even withdraw, I suppose, the whole C.I.D. from the responsible Minister, if he thought fit?—Yes; and, if I may make this addition to my answer, we felt that it is better to deal with a state of affairs of that kind in general terms rather than in explicit terms, for this reason. First of all, we do not want to make a distinction in the Constitution Act between one Province and another. Rightly or wrongly, we felt that it is better to give all Governors these general powers, knowing at the same time that it may be necessary, perhaps only in one Province, ever to put them into operation, but we have felt that it is better to deal with general powers of this kind, rather than to make explicit provision for a particular contingency in a particular Province.

5651. The Governor, of course, using that power, might find that it was not sufficient to have the Special Branch of the C.I.D. under his authority. He might want to have agents to carry it out within his jurisdiction, or the Governor-General, of course, in his own case. Does the Secretary of State consider that paragraph 71 would cover all that, if it was necessary?—Yes.

*Sir Austen Chamberlain.*

5652. Lord Salisbury invited me to put a question, if I felt inclined. The Terrorist conspiracy has shown itself, to some extent, in other places than Bengal, has it not?—Yes.

5653. It might, though we hope it will not, at any time develop in other places?—Yes.

5654. Do you think it is sufficient to rely upon the powers of individual Governors acting in their discretion in such circumstances as those, or would it not be better that the powers should be vested in the Governor-General for the whole country, and that that Special Branch which may require action in different Provinces should be under his

authority in his discretion acting through the Governor?—I do not think there is very much difference between the proposal in the White Paper and the proposal just suggested by Sir Austen Chamberlain. The Governor in every case would be acting as the Agent of the Governor-General, and subject to his directions.

5655. The suggestion that I have made would make the special organisation, wherever it was required, a service reserved to the Governor-General, and would meet your point, that we must not legislate invidiously against a particular Province?—I think that Sir Austen's suggestion is a matter for consideration. I would, however, ask him to keep in mind the fact that Law and Order is a Provincial subject, and it may be found better, from the administrative point of view, to keep it more directly under the Provincial administration. But, in actual practice, the Governor, as I have just said, will be acting as the Agent of the Governor-General.

Marquess of *Salisbury*.

5656. The Secretary of State says that Law and Order is a Provincial subject, but, unfortunately, the criminals do not always recognise that?—I do not think, Lord Salisbury, that affects it, though the division of subjects in a Constitution Act is to those subjects which should be administered Provincially and those which should be administered Centrally.

5657. Perhaps, I was too brief, but it is clear that a conspiracy, and even a crime might extend over the borders of more than one Province?—That, of course, is perfectly true. None the less, if you take the example of the United Kingdom, most of the Police administration is under local authorities.

5658. Subject to the Home Secretary?—Subject, as Lord Salisbury knows, to the Home Secretary to a very limited degree.

Marquess of *Reading*.

5659. May I ask you this, Secretary of State: You said just now that the Governor would be acting as the Agent of the Governor-General; do you mean that whenever the Governor is acting on his own special responsibility, he

would be acting as the Agent of the Governor-General?—In the Constitutional sense, yes. The chain of responsibility is the Governor, the Governor-General, the Secretary of State, and Parliament.

5660. I find it a little difficult to follow in that way. I am only asking to clear it up so that one need not come back to it, just to see what is meant by it. Do you mean because he is under the direction and superintendence of the Governor-General under the Act? He would be, of course. Is that the reason?—Yes. There must be the chain of responsibility, and the chain of responsibility must pass through the Governor-General to the Imperial Parliament and the Secretary of State.

5661. I only wanted to get quite clear as to what was meant by it. Suppose, for example, he had the special responsibility—the Governor of Bengal, we will say. He has a special responsibility entrusted to him. He wishes then in his discretion to act; he takes action accordingly. He is acting on his own discretion, is he not, or do you think he would have to consult the Governor-General? That is what I am anxious to ascertain from you?—I think it would depend very much upon the circumstances. I think in nine cases out of ten a convention would grow up under which he would not consult the Governor-General, but technically and Constitutionally the Governor-General would give him directions.

Sir *John Wardlaw-Milne*.

5662. May I just ask a question to clear that up? The Secretary of State refers to the special responsibilities on page 23, paragraph 47, in which case it is there stated that the Governor-General will act on his entire responsibility, and that the Governors are to be backed with special responsibilities acting as his Agent. Is that what he refers to?—Yes. The actual paragraph in which this is brought out is paragraph 72.

Mr. *Zafrulla Khan*.

5663. Which should, of course, be read with paragraph 43 in the Introduction on page 22?—Yes, in paragraph 43 of the Introduction. Paragraph 43 is explanatory of the position.

Marquess of *Salisbury*.

5664. If I may repeat what has already been discussed in the Committee, though I think it has not been discussed, when we have been taking evidence, which makes, of course, a great difference, in connection with this subject—what proposal is in the mind of the Government with regard to giving access to various officials, leading officials, in each Government to the Governor, or in the case of the Governor-General, and I refer very particularly to the Inspector-General of Police. Do the Government contemplate that the Inspector-General of Police would have the right of access to the Governor of his own motion?—We have very fully considered the various alternatives, and I think we should all admit that there is a good deal to be said for either course. At the same time, we have come down upon the view expressed in paragraph 69, under which the Governor would be given general powers of arranging to see any officials that he wished, at any time that he wished, and I believe in actual practice a Governor who is effectively carrying out his duties and who is interested in the administration of his Province, will see the Provincial officials very frequently; and, in the case of the Inspector-General of Police, it is open to the Governor, under paragraph 69, to make any arrangement that he likes with him.

5665. Of course, the difficulty is that we do not understand how a Governor can exercise his special responsibilities unless he is kept always *au fait* with what is going on?—We should hope he would be kept *au fait* with what is going on, both by his own staff and also by giving directions that whatever papers were important in the administration should be brought to him, and he should have an opportunity of studying them. I contemplate that the Governor would be following very closely what was happening, and that he would have at his disposal both the staff and the reports to check what was happening outside, and to realise when a situation was developing under which he might have to intervene under his special responsibilities. Upon the whole, we have thought that that was a better course than the course of stating explicitly in a Constitution Act that such-and-such officials have the

right of access. We felt, rightly or wrongly, that if we had made a statement of that kind in explicit terms, the result of it would be, first of all, to undermine the responsibility of the Government, and, secondly, to give the impression that there was suspicion between the Governor on the one hand, and his administration on the other. On that account, it seemed to us much wiser in the interests of sound administration and in the interests of peace and concord between the two sides of the Government, to give the Governor the fullest possible powers, but to let him exercise them in the way that he thinks best in the circumstances.

5666. Has it not occurred to the Secretary of State that it is much more invidious for the Governor to send for the Inspector-General at a particular moment than if he saw him regularly?—I am contemplating that he would see him regularly.

5667. You mean under this Clause he would be able to say: "I will see the Inspector-General once a week"?—Yes.

Lord *Eustace Percy*.

5668. Has the Secretary of State ever considered the possibility of giving certain officials who have a more or less independent or statutory status, such as the Inspector-General of Police, the Advocate-General, and the Accountant-General, the right of access both to the Cabinet and to the Governor in order to avoid this invidious appearance?—I am not sure how far we have considered the right of access to the Cabinet. I think there again, subject to further consideration, I would say that it is better to leave it in general terms. After all, we are dealing not with a small uniform country, but with a great Continent, and I believe myself that procedure is going to differ very much from one Province to another, and that it is therefore better not to be too explicit in matters of this kind, but to ensure the Governor having the fullest possible powers for dealing with his special responsibilities but leaving him a certain latitude as to how he applies them.

Sir *A. P. Patro*.] May I add, with the Noble Lord's permission, that at present the Heads of Departments, especially the Inspector-General of Police, is always



invited to be present at Cabinet meetings, and to give his advice in matters relating to the carrying out of law and order in the Provinces. I am sure my friend, Sir Ramaswami Aiyar will also support me, that, in connection with this Mopla Rebellion the Inspector-General was invited to advise the Cabinet as to the procedure to be adopted.

Marquess of *Salisbury*.] I appreciate the reasons which affected the Secretary of State in the answer he gave, but, if Parliament is giving up this tremendous authority, it is necessary to reassure us that there will be proper liaison between the principal officials and the Governor.

Sir *Ramaswami Aiyar*.] As my name was mentioned by Sir A. P. Patro, it may be as well to mention that, although now and then the Inspector-General was present at meetings of the Cabinet, yet his Excellency, Lord Willingdon, always made it clear that the Inspector-General should consult the Member first, and, with his permission, attend the Cabinet.

Sir A. P. Patro.

5669. Yes, that is so?—If I may add this observation to the answer I have given to Lord Salisbury, I quite realise the need not only for reassuring public opinion here, but for reassuring a great service like the Police in India, but I still think it is better to deal with the question in the general way in which we have dealt with it in the White Paper, supplementing, however, the clauses of the Constitution Act by whatever is thought fit in the circumstances to insert in the Instructions. I think the Governor's Instructions are the proper vehicle really for giving him a lead as to how we hope he will exercise these particular responsibilities, and I would remind Lord Salisbury that special sanction is to be given to these Instructions by making them subject to a vote of both Houses of Parliament.

Lord *Salisbury*.

5670. So if they are modified that will come before Parliament again?—Yes.

Marquess of *Reading*.

5671. That means, as I understand it, Secretary of State, that in the Constitution Act in some form or other (it may

be in an Appendix, or whatever you think right) there will be a provision dealing with these Letters of Instructions?—Yes, certainly.

5672. It does not mean, does it, that whenever a Governor or Governor-General is going to India, or to a Province, his Letters of Instruction would then have to be submitted to Parliament? You did not mean that, did you?—It would be the standing Instructions both to the Governor-General and to the Governor.

5673. I am drawing the distinction as I thought between what is in the Act of Parliament, or in one of the Appendices to the Act of Parliament, as defining what is to be in the Letters of Instruction. That is general. The question I wanted to put was, Is it suggested that under this practice it would be necessary for Letters of Instruction issued to a particular Governor or a Governor-General after the Constitution Act is passed, to be submitted to Parliament?—As Lord Reading knows, the Letters of Instruction are standing Instructions.

5674. Yes?—And, as far as I know, they have not been varied since the Government of India Act. These Instructions have gone on for 12 years.

5675. They are not under Act of Parliament at all, are they?—No, but I am making that statement in order to show that they are not in actual practice varied from year to year, but it is our intention that Instructions in the future should have Parliamentary sanction behind them for this reason, that we are making them the vehicle of so many important developments.

5676. I only want to get this clear. I am not challenging for a moment that view: All I wanted to be clear was this; I quite follow that that would be necessary in the Constitution, that you wish to get certain instructions which would have to form part of the Letters of Instruction. All that would be dealt with by the Act of Parliament, but what is not clear to me, and why I am asking the question, is when a Governor or a Governor-General is about to proceed to India to take up a position to which he has been appointed is it suggested that the Letter of Instruction appointing him would then have to come before Parliament for approval?—I see Lord Reading's point.

5677. The reason I am putting it, Secretary of State, is because, for the first time, I think, you are making Letters of Instruction which hitherto have been from the King, and which will continue to be from the King, much more subject to Act of Parliament than has hitherto been the case. That is why I was asking?—I am assuming that under the White Paper proposals a Resolution of both Houses would give sanction to the standing Instructions, and those standing Instructions without further alteration would be issued to a Governor when he was going to India.

5678. May I put one final question on it, and then, as far as I am concerned, I have finished? That would not mean, would it, that you would have to conform in each case to particular Letters of Instruction as passed by Act of Parliament? It would mean that you must at least include and comply with those, but it would not mean that you could not vary them, would it, because certainly, in my experience, I have known the Letters of Instruction varied before without their having to be submitted to Parliament, of course. It was done by letters from the King?—I had better refresh my memory on that point. I did not think that Governors' Instructions had been varied. I am dealing with the Provincial Governors.

Marquess of *Reading*.] I do not want to press the point. Would you mind having it examined so that they we may be clear about that? My impression was certainly that hitherto there has been elasticity in the Instructions which have been issued, and all I wanted to see was that that should be continued. I remember, in my own case particularly, definite alterations were made in the Letters of Instruction without Act of Parliament in order to meet new conditions.

Sir *Tej Bahadur Sapru*.] May I remind Lord Reading that when he was the Viceroy it was discovered that by chance a clause giving him the Royal Prerogative of Clemency was omitted, and I had to draw the attention of the India Office to it at that time, and the Instrument of Instruction was varied. It arose in a very important case which passed through me to your Lordship.

Marquess of *Reading*.

5679. Yes?—I will certainly look into Lord Reading's point, but I think it is sufficient for this examination this morning for me to say that the main directions in the Instructions we intend, under the White Paper, to have the sanction of both Houses of Parliament.

Archbishop of *Canterbury*.] May I ask, to make that clear: In paragraph 64 there is opportunity given for Parliament not only to approve of the original Instrument of Instructions, but to make representations as to any amendment, addition or omission?

Marquess of *Salisbury*.] That is at the time it is first submitted to Parliament, I take it?

Archbishop of *Canterbury*.] Is that at the time it is first submitted, or at subsequent stages?

Marquess of *Salisbury*.] It does not mean that Parliament is suddenly to come down *proprio motu* and say: "We want the Instructions altered." Of course Parliament can do anything, but that is not the intention, is it?

*Chairman*.

5680. I think it is for the Secretary of State to consider whether he should put in some Memorandum at the end of his examination to clear up these points which have been raised, if that is his view?—Certainly, my Lord Chairman, as long as we are clear that the important things will be in the Instructions, and the important things will have the sanction of Parliament behind them.

Marquess of *Salisbury*.

5681. May I add one word for the Secretary of State's consideration? He has used several times in answer to my noble friend the words "standing instructions," so I gather they will be uniform always—not any special instructions to the Governor of Bengal different from those to any other Governor. He mentioned that, did he not? "Standing" would mean that they were a uniform thing issued to every Governor of every Province when he went out?—Yes.

5682. I wonder if the Secretary of State will consider whether that is

sufficient?—Yes. Lord Salisbury will also bear in mind that the Secretary of State, outside the instructions, very often gives directions to a particular Governor.

5683. Yes. I am sure the Secretary of State will forgive me saying that is a protection to the Secretary of State, but it is not altogether a protection to Parliament?—Except to this extent, that the Secretary of State is responsible to Parliament. If he is giving his directions badly, as a rule there are plenty of critics who make it known.

Marquess of *Salisbury*.] If Parliament knows anything about it.

Major *Attlee*.

5684. Could I ask the Secretary of State whether it is the intention that Constitutional progress in the Provinces of India should be effected by varying from time to time the instructions given to Governors; whether that is done by Parliament or the Secretary of State is another matter; but whether that is the intention of using that as a vehicle for alteration?—Yes; I certainly contemplate development taking place on those lines. I think in actual practice what will happen will be what has happened in many other parts of the British Empire, namely, that instructions and future Acts of Parliament represent an actual state of affairs that has been created.

Sir *Austen Chamberlain*.

5685. Would the Secretary of State put forward the fact that the instructions would be subject to the assent of Parliament as a guarantee for Parliament or a safeguard for Parliament on which Parliament could rely?—Yes.

5686. The answer which he has just given would seem to imply that after those instructions have been approved by Parliament they might be varied without the authority of Parliament?—No; if I gave that impression it was not what I intended. Supposing Parliament was ready to alter the instructions in the future, Parliament, I assume, would take into account the developments of a period of years, but the sanction of Parliament would be equally necessary.

Archbishop of *Canterbury*.

5687. Does not No. 72 contemplate not only that there will be the instrument of instructions which cannot be varied without the authority of Parliament, but also provisions for special directions to the Governor by the Governor-General or by the Secretary of State, provided they are not inconsistent with these instructions?—That is so.

5688. So it leaves there, provided it be not inconsistent with the instructions, a certain liberty with the Secretary of State to give directions as circumstances may arise?—Yes, that is so; and that latitude would enable the Secretary of State or the Governor-General to give directions to a particular Governor to exercise his powers in this or that way.

5689. Provided it be not inconsistent with the instructions to which Parliament has given its assent?—Yes.

Marquess of *Salisbury*.

5690. I do not know whether you could lay a model form of instructions before the Committee so that we should know and Parliament should know exactly what was really intended?—Yes; we have no doubt Lord Salisbury will remember a draft in paragraph 73 which is not intended to be exhaustive.

5691. No—it says, "*inter alia*"?—But it is intended to be an illustration of the kind of instructions we have in mind.

5692. I think if that could be developed so that we should know, not necessarily the final form which the Secretary of State would adopt, but the sort of thing he is contemplating, it would be helpful?—I am reminded that our reason for not inserting greater detail into the instructions in paragraph 73 was that we felt that we had better wait until the Committee had got further with its deliberations and until we knew what further instructions the Committee wished to have inserted.

5693. Of course, the Secretary of State must choose his time when he thinks fit to do it?—But I would certainly agree with Lord Salisbury that at some time or other (perhaps when our minds are a little clearer as to what we want in the instructions), such a draft should be put before the Committee.

5694. We have discussed something about the special responsibilities of the Governor and how the Governor is to know the occasions when he ought to use his special responsibilities, and this brings me to the further question of how the Governor will act under his special responsibilities if his directions are not carried out. Of course, we are assuring that he is at issue with his Ministers, otherwise the case would not arise. No doubt the ordinary case will be that he will not be at issue with his Ministers, but the special responsibilities are there when he is at issue with his Ministers, or with one of them, and in that case, when he finds it necessary to exercise his special responsibilities, how will he see that his order is carried out?—Constitutionally his orders will have to be carried out. His order will be the only effective order. Any official, therefore, will have to carry out his order. When it comes to a political situation it might, I suppose, be suggested—perhaps it is suggested in Lord Salisbury's question—that the officials would refuse to carry out the Governor's order.

5695. We will not say "refuse." We will say "neglect to carry them out." I will say "refuse" if you like, by all means?—If it were simply a case of neglecting to carry out the Governor's order he would have to insist that it was carried out. If, on the other hand, they refused to carry out his order (a contingency that I should have thought was very unlikely, in view of the fact that in all these difficult times now, for many years under the greatest provocation very often, under the greatest political pressure very often, the Services, both Indian and British, have carried out their instructions), I would say that in a contingency in which the Services refused to carry out the Governor's instructions, then a state of emergency had arisen and the breakdown clause in the Constitution would have to come into operation, and he would have to take over the government himself. I think it is very unlikely that that state of affairs would arise, if for no other reason than that for years to come the Governor will have the Secretary of State's services and the other superior services on which to depend; but when I say that, I do not in the least intend to suggest that the other services, mainly Indian services, are in the least likely

to refuse to carry out the Governor's orders.

5696. No, but when you are providing a safeguard, of course, you must contemplate the cases when the safeguard is required. Let us suppose (I hope everybody here will realise I am not saying this by way of desiring to be in the least bit neglectful of reasonable feelings and susceptibilities, but we must put the case as it might arise) there was a Communal difficulty and the particular Minister, because of his Communal convictions, was unwilling to carry out an order of the Governor under his special responsibilities, what the Committee, I am sure, would want to know is, how would he proceed to enforce his will? All the subordinate officials would be in the hands of the Minister. Their careers would be dependent upon his will, and so forth, and how would he act if he found that what he directed was not carried out? Of course, the Secretary of State said he might suspend the Constitution, but he cannot do that every time there is a breach of the rule of special responsibility?—The Governor would give his order; I believe the Governor's order would be carried out. In the event of communal trouble, I suppose it might be argued that officials might refuse to carry out their orders under present conditions. They never have done so; I do not believe they will do so.

5697. But, surely, the answer, "They never have done so," is no sufficient reply when we are substituting for the present Government responsible Ministers. After all, the responsible Ministers are largely and must be largely affected by the views of their electors and their constituents?—It is not a complete reply, I quite admit; at the same time, it is a presumption, anyhow, judged upon our past experience, that they will carry out the Governor's orders.

5698. But I mean, if they will carry out the Governor's orders, why have the rules of special responsibility at all?—For the simple reason that the Governor could not intervene unless he had this field of special responsibility.

5699. I should have thought he could always intervene. He could say to the Minister that he wished certain things to be done?—Certainly, he could, if he had no ministerial responsibility, but the

whole basis of our scheme is that there should be ministerial responsibility, and the Governor should only intervene in his own special field of responsibility.

5700. I must not press the Secretary of State too far, but, at any rate, the Secretary of State does not contemplate a case where a responsible Minister would decline to carry out the wishes of the Governor?—Yes, I do; I contemplate that case, and I contemplate that the Governor then would give instructions to officials over the head of his Minister.

*Sir Austen Chamberlain.*

5701. Would he not dismiss his Minister?—Certainly, I should think so, almost inevitably.

*Sir Austen Chamberlain.*] I understand Lord Salisbury's fear to be that if the Minister remained in office, the Services would look to him as their Chief, and be afraid to obey the Governor's instructions?

*Marquess of Salisbury.*] That is right.

*Sir Austen Chamberlain.*

5702. Would not the Governor's remedy be to dismiss that Minister and appoint another who would carry out his instructions?—I should think so. I hope the contingency will not happen very often, but supposing it did, I can imagine that is what would happen.

*Marquess of Salisbury.*

5703. We all hope, of course, that the contingency will not happen; it is only if it does happen?—Yes. Lord Salisbury must, however, remember that the Senior Officers in the administration will not be dependent for their careers upon a Minister of that kind at all or upon a Government that is hostile to the Governor.

5704. All the subordinate officials, the local Police, and others, will largely depend upon the Minister, for instance?—Yes; at the same time, in a contingency of that kind, judging from experience here, I would have said that the lower officials in the Services would follow their senior officials.

5705. The District Magistrates, for instance; they would be directly under the responsible Minister?—No; they

would be recruited under the Secretary of State and Parliament.

*Lord Hardinge of Penshurst.*] May I put a question, with Lord Salisbury's approval?

*Marquess of Salisbury.*] If you please.

*Lord Hardinge of Penshurst.*

5706. Would the Governor have the right to dismiss a Minister?—Yes, in the exercise of his special responsibilities.

*Lord Hardinge of Penshurst.*] Is that included in your draft?

*Lord Eustace Percy.*

5707. Supposing it is not under his special responsibilities? It is inherent in the tenure of the Minister, under paragraph 66, to hold office during the Governor's pleasure?—Yes. At the same time, that is a phrase that has grown up around Constitutional meanings and would imply that the Governor would not intervene, but, apart from that, there is the fact that in his field of special responsibilities the Governor can intervene in any way he thinks fit to see that those special responsibilities are carried out.

*Marquess of Salisbury.*

5708. Supposing the Minister was dismissed and supposing that the convention which the Secretary of State hopes for had already grown up, and there was joint responsibility, and, thereupon, the rest of the Government said: "Oh, no, of course, we stand in with our colleague; we shall all resign," what would the Governor do then?—He would have to look for another Ministry.

5709. Who would not have a majority in the Chamber?—Who might not have a majority in the Chamber.

5710. Well, what then?—He might have to have an election.

5711. He might dissolve Parliament?—Yes.

5712. That is not always effective, as we know?—What would Lord Salisbury suggest? What further power would he suggest that he should have?

5713. My object is to get from the Secretary of State a complete picture of what really is going to be done under the White Paper and when he produces,

as he has done with the greatest candour, these proposals for special responsibility; which mean what is to be done in the case of a crisis, then I am only asking how the crisis could be worked out, and I am suggesting to him that if the Minister resigned or was dismissed, his colleagues might resign and the Governor might be left in the position of not being able to get a Government at all?—If he could not find a Government at all, then a case of a breakdown of the Constitution would have arisen, and he then has to resume full powers. I do not myself believe that that situation is ever likely to arise, particularly in view of the Constitution of the Provincial Assemblies. I think it is most likely that the Governor would be able to find an alternative Ministry.

5714. It really depends upon how far the thing had developed on the lines which the Secretary of State anticipates. If a Parliamentary system with joint responsibility had grown up after the model of the British Constitution, which is what I understand to be the object, it almost certainly would happen. Unless the Minister had acted against the wishes of his colleagues, they would all stand by him?—Yes. At the same time, Lord Salisbury should remember the Constitution of the Indian Assemblies. My own conjecture would be that a situation of this kind might arise in a case of communal discrimination; I think that is the kind of state of affairs that might lead to a crisis in several of the Provinces. In that case, it seems to me to be reasonable to expect that the Governor would not be entirely isolated, but that he would have behind him a big body of opinion, both in the Assembly and in the Province outside. I think it would be very rarely that the Governor would find himself entirely isolated, with not sufficient support in the Assembly or in the Province to form an alternative Government.

5715. The Secretary of State will remember that in his evidence Sir John Thompson suggested that they might be a government of officials, but he knows that that is really not allowed under the White Paper. They must all be Members of Parliament, must they not?—Supposing the Governor cannot find an alternative Ministry, and the Constitution has been brought to a standstill, then a breakdown would arise and the

Governor would carry on with officials or anybody else that he wished.

5716. I meant, short of a breakdown, it would not be open to him when the Government resigned to fill the offices with officials?—No.

5717. Therefore, he would be driven to suspend the Constitution, in that case?—If he could not find an alternative Government.

5718. That would be a very strong measure to take, and would only be taken very occasionally?—A very strong measure, and I should hope rarely, if ever, exercised.

Marquess of *Salisbury*.] Of course, that is a matter of opinion.

Marquess of *Reading*.] May I suggest that something of the kind has actually taken place; the Secretary of State will be aware of it. It occurred in my time, and I think also in Lord Irwin's time, in which there was a difficulty in constituting Ministries in the particular Provinces for the purpose of administering the transferred subjects, and there was a breakdown in that sense, but as they had not a majority, no Ministry had a majority, in the end I think it was by order of the Governor-General, if I remember right; then the Governor would take control and did administer, and administered for some time. In my time, I remember it happened in two Provinces; one, I think, was in the Central Provinces, and the other was in Bengal; and in Lord Irwin's time, I think it happened also. It certainly did in those two Provinces in my time. There was no difficulty. If I may say so quite frankly, the only real difficulty we found was that there was no expansion of the development, because it was felt that dealing with it in that way, the Governor did not care to go into any matter, but just contented himself with administering to the best of his ability.

Marquess of *Zetland*.] He had the nucleus of an Executive Council at that time?

Marquess of *Reading*.] Certainly, it was so, I agree; but still the Governor had to act.

Lord *Irwin*.] Of course, with reference to what Lord Zetland has just said, in the same way in the future if this extreme situation developed, he would also

have the personnel of the several Departments; they would remain and, presumably, from them he might select persons to help him, if he so thought fit.

Marquess of Zetland.] Yes.

Witness.] Perhaps, I might review in a sentence or two the kind of way in which I think the Governor will exercise his special responsibilities. I imagine that the Governor will keep in very close touch with what is happening over the whole field of Provincial administration. He will have at his disposal the officials to advise him, but what is much more important, I am contemplating that he will keep in very close touch with his Ministers and that there will not be this gulf between them, one side going one way and the other side the other; but that the Governor will be keeping in very close touch with them, and he will know some time in advance before a situation arises in which it might be necessary for him to exercise his special responsibilities; and, I believe, in that case, if the Governor is a sensible person and if the Ministers are sensible persons—and we have, after all, to assume a certain measure of commonsense in any proposal that we make—what the Governor would then do would be to talk over the situation with the appropriate Minister and, if necessary, with the Cabinet, and to get the Cabinet to so act as to prevent that situation arising at all. I believe myself that in ninety-nine cases out of one hundred, as a result of that kind of consultation and co-operation, the situation will not arise at all under which the Governor would have to intervene. If the situation does arise, then the Governor will have to take what action he thinks fit. He will have to give his direction to the Civil Service; he will have to give his direction, if necessary, to the Ministry, and if there is then a cleavage, it may lead to the Minister's resignation or dismissal. It may lead eventually to the Government resigning, to an election taking place, and eventually to a breakdown of the constitution altogether, and to the resumption by the Governor of full powers; but, I believe myself that that kind of contingency is very unlikely to happen. If it does happen, we have given both the Governor-General and the Governor full powers to deal with it; but we rely

very much upon a system of co-operation growing up between the Governor and his Ministers, under which the Ministers of their own initiative will take such action as to make it unnecessary for the Governor to intervene under his special responsibilities at all.

Sir Austen Chamberlain.

5719. Secretary of State, the Governor under the new system will have immense responsibilities, will he not?—Yes.

5720. It is common ground to us. I think, that he must be in a position to keep himself fully informed of what is going on, because in certain contingencies he himself might become personally responsible for action?—Yes.

5721. And unless he knows and is fully informed as to what is going on from day to day, those contingencies may come upon him by surprise and find him unprepared; that is common ground?—Yes.

5722. In those circumstances, can you develop at all the answer you gave to Lord Salisbury, that the Governor was to have whatever staff he required. I do not visualise the machinery through which the Governor is going to keep himself informed?—Generally speaking, I feel that he must have a definitely more expert staff than he has got at present, and I would suggest that you should put that question to Sir Malcolm Hailey, who will deal with it from his own practical experience. I would also suggest that it is very difficult to specify exactly what staff any Governor should have, for this reason: I should be surprised if Sir Malcolm Hailey did not say that a Governor in one Province would want a larger staff than he wants in another Province. That being so, it is very difficult for me to say more than that the Governor would have whatever staff is required for that Province, and under the White Paper we retain the power for ensuring that he should have an adequate staff; but I would suggest that Sir Malcolm should now develop it a little bit further from his own practical experience.

5723. If you please, do so, Sir Malcolm?—(Sir Malcolm Hailey.) I do feel the distinction will undoubtedly have to be drawn between the Presidencies and the other Provinces, because you have

coming to the Presidencies in the past, at all events, Governors who have not previously been acquainted with India. The personal staff of Governors at present consists of a Private Secretary, and in the Presidencies a Military Secretary, who deals mostly with social affairs. In the other Provinces you have a Private Secretary who is generally a Military Officer, and almost entirely deals with social affairs. I feel sure that in the Presidencies in the future you will have to have a Governor's Secretary, who will have to be a senior civilian practically of the same class, or the same standing, as officers who are now appointed Executive Councillors, or Members of the Board of Revenue. Without such an officer the Governor would be unable, at all events in the first instance, to keep himself in touch and fully informed of administrative matters. In the other Provinces it is possible that you need not have an officer quite so senior, but he should, at all events, be of a senior Collector's or Commissioner's rank, because one must anticipate that when the Governor is away on tour there will need to be somebody who can consult on his behalf with the Ministers, not in any definite and formal manner, but in case the Ministers wish anything to be brought specially to the Governor's notice. Also I assume that he will have to see various visitors officially, and otherwise, on the Governor's behalf. It is therefore necessary that he should be a man of experience. If it, further than that, becomes incumbent on the Governor to take over any special branch of work in exercise of his special responsibilities, it is clear that he will need additional assistance. Take, for instance, the special branch in Bengal. At present that is entirely in charge of one Deputy Secretary. It is clear that the Governor if he had to take over that branch in an emergency would need a secretariat officer of his own in charge of it. Ordinarily, I do not think that he would need much further addition to his establishment other than clerical, but it might be in other Provinces that on special occasions, for instance, we will assume that a famine was on or there was a great deal of internal trouble of a communal nature, he might have to add to his secretariat staff. There would be more

people to see, and more work falling directly on him. He might, therefore, have to add an assistant to his Secretary. I assume that in the future he would have his own secretariat establishment. Now most of his work passes off to the Government secretariat. They keep most of his papers for him, and correspondence is conducted largely through them, say, personal correspondence with the Viceroy. Clearly in the future, as he has a special and individual position, he would have to have his own clerical staff, but that is a matter easily arranged and would not necessarily involve anything very much in addition to what he has at present. Quite clearly if he has to correspond with the Governor General on the action of his Ministers that could not go in to the General Secretariat. That is the kind of staff that personally, I think, would suit the occasion or the needs of the new Constitution. Provision is made in paragraph 65 of the proposals for his personal and secretarial staff which would be fixed by Order in Council. That would not in itself apparently apply to any special staff that he might have to engage on occasions, and he would have to find that through the powers given him in paragraph 98. But it is just possible that that point that I have raised in regard to paragraph 65 might need to be looked at on the matter of drafting afterwards. It is, however, only a minor point.

5724. What is the part of paragraph 98 to which you are particularly referring us? Is it sub-paragraph (2)? —(Sir *Samuel Hoare*.) Yes, it is sub-paragraph (2). (Sir *Malcolm Hailey*.) Sub-paragraph (2). There again it is just possible that the wording of that might need to be altered in order to make it clear what "personal or secretarial staff" meant; but that is only a matter of drafting.

5725. Secretary of State, I will come to another subject. It is provided by the White Paper that Ministers must be or become within six months, I think it is, Members of the Legislature. Have you considered whether it might not be convenient, at any rate, at this stage of development of the Constitution to enable the Governor to appoint a Minister with the good will of his



colleagues who had not obtained a seat in the Legislature; who would have no right to vote, but to whom might be accorded the right of speech in the Legislative Chamber?—(Sir *Samuel Hoare*.) My difficulty is the difficulty of the Cabinet's responsibility, and I do not quite see how such a Minister would fit into a Cabinet of which all the other Ministers were responsible to the Legislature. I would have thought it was better to give the Governor, as we have given the Governor, "power to make an appointment for an emergency. Under the White Paper proposals a Minister has to be a Member of one or other House only after a period. We had in mind an emergency in which it might be necessary for the Governor to make an emergency appointment. When the emergency comes to an end I would have thought that, looking at the whole picture, there was more to be gained by making the Cabinet as responsible as possible, and that if it was a case of a Minister who either did not wish to face an election, or was not likely to be returned in an election, then I should have thought anyhow in Provinces where there is a Second Chamber, that the Governor might have, with the approval it may be of his Cabinet, nominated him as a Member of the Second Chamber. I agree the difficulty is where there is no Second Chamber.

5726. Exactly, but would you address your mind to that point? If there were a Second Chamber in every Province I do not think I should feel the difficulty, but here under our own Constitution it is found convenient (it is indeed statutorily necessary) that certain Members of the Government should be appointed from a non-elected House, and should not submit themselves to election, and yet that does not interfere with the common responsibility of the Cabinet to the Legislature?—I would admit that there is a great deal to be said for Sir Austen Chamberlain's suggestion. The trouble is the difficulty it may make with the Government as a whole, and, in my own mind, setting one against the other, I have thought that it is better not to have a Minister of this kind, the more so, as I think it is in those Provinces in which there is to be a Second Chamber, or in which we contemplate a Second Chamber, that

Sir Austen would most wish to see a minister of that kind.

5727. May I try and make my meaning a little clearer? I am not contemplating that this power would be used to introduce into the Government a discordant element, but that it might be agreeable to the elected Ministers that there should be one among their number who had not obtained a seat, and who, perhaps, might find it difficult or inconvenient to obtain one. Our own constitution provides for that?—Let me clear upon this point: Does Sir Austen contemplate that a Minister of this kind should be appointed on the advice of the Provincial Ministry, or at the discretion of the Governor?

5728. What was in my mind was that it might be found practically desirable to have a man as Minister who, for some reason or another, did not obtain an elective seat in a single Chamber Province; that that might be equally desired by the Ministers and the Governor, but that under the White Paper, even though they wished it, it was not permitted?—Then I do understand, do I not, Sir Austen to mean that an appointment of this kind would be made on the advice of the Ministers?

5729. To the extent to which the advice of the Ministers is governed by the choice of the Ministers?—I see what you mean. I think in my own mind I would say at once it would make a great difference to my point of view whether an appointment of that kind was made on the advice of the Ministers, or at the sole discretion of the Governor, and I should like to think of the suggestion further.

5730. Thank you. Perhaps at a later stage you would think it over in that form and tell me whether you would be inclined to favour it or not?—Yes.

#### Archbishop of *Canterbury*.

5731. Would the Secretary of State agree, in view of what has been said, that that constitutes *prima facie*, apart from other considerations, a very strong reason for having Second Chambers in all Provinces?—I would not like to draw a general conclusion from an argument of that kind. There are other considerations about Second Chambers that enter into the question anyhow in some of the Provinces.

*Sir Austen Chamberlain.*] That was the point, your Grace, that I was just coming to.

*Lord Eustace Percy.*

5732. I do not quite understand the connection in the Secretary of State's mind between the fact of a non-elected Minister, and the question of responsibility. Under the French Constitution, for instance, Ministers are specifically declared to be individually and collectively responsible, but communally, both the Minister of War and the Minister of Marine are not Members of either branch of the Legislature, and that does not affect their responsibility to the Legislature in any way?—I would have thought that we have to keep in mind the general procedure that has grown up in the British Empire and the views that people generally in the British Empire hold of responsibility, and the position of members. I quite admit that if we had no background to these questions Lord Eustace's suggestion might carry a great deal of weight with me, but, looking at the whole history of collective responsibility and Ministerial responsibility, as we think of it here, and as I believe a great many politically-minded Indians think of it, I cannot help thinking that that does introduce an element that would seem new to many Indians, and to many of us, and that might create a good deal of suspicion in the Ministry itself, and in the Assembly itself, and might make it more difficult for the Constitution to work. I do not put it higher than that.

*Sir Austen Chamberlain.*] You see Secretary of State, that, as far as I am concerned, I am only suggesting that there should be open to Indians that which is open to any Prime Minister forming a Government in this country.

*Lord Eustace Percy.*] Or in any Dominion?

*Sir Austen Chamberlain.*

5733. For my purpose it is sufficient for me to say in this country, and in the Mother of Parliaments, it is possible for the Prime Minister to secure the services of a man in this country without that man having to undergo election, and I want the Secretary of State, if he will (he has promised to

consider the matter) to consider whether that is not a convenience that ought to be at the disposal of an Indian Government?—Yes, I will certainly consider the point further, and, if I may, I would suggest to the Indian Delegates, perhaps they would give their minds to it also, assuming, as I think Sir Austen has assumed, that an appointment of that kind would be made on the advice of the Ministers.

5734. Yes, I am quite ready to put my question on that assumption?—Yes.

5735. Secretary of State, may I now ask you to state as briefly as you can what are the reasons beyond the question of expense, that have deterred you from proposing a Second Chamber in all Provinces?—Apart from expense I should put the reasons, I think, in the following order: First of all, there is public opinion to be taken into account, and it is a fact (I do not say that it should be a final reason for any decision that we may take) that certain Provinces appear to be definitely against Second Chambers. Secondly, there is the question of finding personnel for all these various Assemblies. India is a very big Continent geographically, but, without any disparagement to Indian political talent anywhere, I would say that in the comparatively early chapters of Constitutional development in India it is difficult to find men who have the ability and the leisure to fill a great many Councils and Assemblies. Thirdly, I would say (here again, I hope, without any offence to any of the Indian delegates) that communal questions complicate the problem. When one has got a decision about communal questions by the First Chambers, one does not want to have the added complications of communal decisions by the Second Chambers as well. That may sound to be rather a cowardly reason for me to give, but it must be taken into account that more than one of the Provinces in India is looking at the question of Second Chambers very much through communal spectacles, and that is a consideration that has got to be taken into account.

5736. Would you agree that if you found it possible to overcome those difficulties the existence of a Second Chamber in every case would go some way to allay doubts that are felt about the

institution of the new Constitution. In much older countries where Constitutions have been working for a long time, the Second Chamber frequently gives a stability and balance to the Constitution which is recognised as very valuable, and does not it seem to you strange that in making this new experiment in surroundings unaccustomed to it, you should omit a safeguard of that kind?—I think Sir Austen must remember that the constitution is somewhat different under a Federal Government; that in the case of a Federal Government there are the two Chambers at the Federal centre, and these Governments are not the kind of sovereign Governments in which the case for Second Chambers is almost unanswerable. But when Sir Austen presses me further I would certainly say, as a Conservative, I would much prefer to see Second Chambers; but I would also say (and I would ask the Indian delegates to take this point into account) that in my opinion public opinion here would be definitely more reassured if there were Second Chambers.

*Mr. Morgan Jones.*

5737. Some public opinion?—I must perhaps restrict that general statement within the limits that the representatives of the Labour Party would desire to apply to it.

*Sir Austen Chamberlain.*

5738. That is all I want to ask on that subject. I turn now to Law and Order—that thorny subject. One argument for transferring Law and Order is the hope that it will bring a sense of responsibility to Ministers, and, through them, to the Legislature and the people. Is that not so?—Yes.

5739. Can you realise that hope, if it is possible that Law and Order should be the personal responsibility of one Minister only, and not the collective responsibility of the Cabinet?—No. I should very much hope that it would be the collective responsibility of the Cabinet. What I ventured to say at the beginning of my evidence to-day was not intended to imply that I am not strongly in favour of collective responsibility, but that I thought it was very difficult to prescribe it in so many words in the conditions of India, in

an Act of Parliament. I want to see collective responsibility.

5740. The difficulty, as I understand, arises in your mind from the communal differences that exist there?—Yes, to a certain point, and also because I believe these things develop better by growth, and with a certain latitude, than if you try to specify them at the beginning in Acts of Parliament.

5741. I will try to put my fear into words: That the Minister, who, I presume, would be called the Home Minister in a provincial government, entrusted with Law and Order, would be apt to become a pariah among his colleagues, or a scapegoat?—I would hope not. Sir Austen, I think, will agree with me when I say that, even amongst the Ministers who may not appear at the beginning to agree about everything, a common feeling does grow up in the course of the lifetime of a Cabinet, and Cabinets do cling together a great deal more definitely and closely than people outside often realise.

5742. Great anxiety has been expressed by some of our Witnesses, and I think has been indicated by some Members of this Committee, about the preservation of the discipline of the Police when Law and Order is transferred. I am speaking of the Witnesses who accept the principle of the transfer of Law and Order, but are particularly anxious that the Chief of Police should be protected against interference in the daily administration of the Force, interference with discipline and the ordinary postings and promotions. Have you any protection to suggest against an abuse of that kind?—If Sir Austen Chamberlain would look at page 24 of the Introduction to the White Paper, and the second paragraph, 47, he will see that we do very much contemplate the necessity of giving the Governor the power to prevent that kind of interference in the daily administration of the Police that would break the morale of the Police; but here again, we felt, rightly or wrongly, that it is wiser to proceed by giving the Governor-General powers rather than by giving him explicit powers that might, indeed, be inadequate; it is always a danger of stating things explicitly; and might, or perhaps would, create suspicion between him and his Government, and make his

with the Minister who is likely to command the largest following. What is the objection to the Governor calling upon this leading man, the proposed chief Minister, and asking him to form a Ministry and to form a Government and to submit a list of names to him for his approval as is done in England?—I imagine, in practice, that is sometimes what will happen, but again I think that is the best way to start, leaving latitude in the matter and keeping in mind the fact that the Governor has a special responsibility which distinguishes his position from the position of the Sovereign in this country, namely, that he is called upon to see that minorities are represented in the government.

5770. A Minister might select a member of a minority in order to get the support of the minority group?—I think very likely.

5771. Are you in favour of the suggestion made in the Simon Report that there might also be appointed certain under-secretaries?—I should not like to give an opinion upon an administrative point of that kind. Here again I would rather leave latitude. I think it will vary from Province to Province.

5772. The same Report, you will remember, was of the opinion that that might ease the communal tension by appointing an under-secretary of a different community from that of the Minister?—I do not think one wants to tie the Provincial Governments up too much nor again does one want to involve them in avoidable expenditure. I would rather let them judge of the merits of the thing in the Province itself.

5773. Something was said early on about the Governor's secretary. Would that be an official whom the Simon Report calls a Secretary to the Cabinet?—No.

5774. Would you be in favour of having that Secretary of the Cabinet as well to keep the Governor informed if he was not present at everything that happened?—I think I would like Sir Malcolm Hailey to deal with this question. My own view is that at any rate in some of the Provinces the Cabinet would not need a whole-time official for work of that kind. If they need a whole-time official by all means let them have one. (Sir Malcolm Hailey.) It was put forward in the Simon Report,

of course as being necessary in order to keep the Governor fully informed of all the proceedings of the Cabinet, and it has been proposed in various quarters that that Cabinet Secretary should have a definite access to the Governor for that purpose. I think most of us now feel that there really would be very little room for an official of that type. He would not have enough to do, and I think most Governors would be perfectly prepared to accept from their Cabinets their own summary of proceedings, and that it would be quite unnecessary to have a separate official for that purpose.

5775. Coming to the question of special responsibilities, Sir Samuel, take (a), the first one, the prevention of any grave menace to the peace or tranquillity of a Province. Do you suggest this should be limited to crimes of violence?—(Sir Samuel Hoare.) No. As the Committee will see, we have left it in general terms of this kind. We think that it is safer to leave it in general terms of this kind, and the more you try to define it more exactly, the greater the difficulties in which you involve yourselves. Here, again, it is the old issue between stating a thing in detail explicitly or stating it in more general terms. We have chosen the alternative of stating it in more general terms.

5776. I think it was Sir Tej Sapru who suggested an additional form of words, saying "arising out of the activities of any person or persons or association tending to crimes of violence." But you would object to that, would you?—Yes; I greatly prefer the words as they are now. I think the more you try to define them further, the more you will be driven into setting out a lot of explicit reservations of various kinds, and in the end from the point of view of Indian public opinion the reservation will look more formidable than it does now, whereas from the point of view of administrative efficiency and ensuring the Governor the power of intervening at proper times, you might find that your definition has tied his hands just in the very way in which you do not wish to tie his hands.

5777. What I am thinking about is certain legislation such as land legislation and other subjects which have been

manuals do contain a vast amount of rules of minor importance, as well as some of those of the first importance. It will be necessary, first of all, on such a proposal as Sir Austen suggested, to schedule the rules which would be considered Governor's rules, separate them off from the rest of the manual. That could be done, because we have done something very much of the same kind with regard to rules under the Prisons Act. Under that suggestion, therefore, you would have Governor's rules which would only be made with the sanction of the Governor, and the remaining administrative rules which would be made in the ordinary course by the Inspector-General, with the general approval of the Government. It would not be impossible to separate the two, if you thought fit.

*Sir Austen Chamberlain.*] I am grateful for that answer ; it is important.

*Archbishop of Canterbury.*

5748. You said, Sir Malcolm, that rules could be made which would be called Governor's rules, which would require the special sanction of the Governor before they were made. That, of course, would apply to any alteration in the rules ?—Yes, certainly. I have only given the words "Governor's rules," just for the purpose of the question ; it might be possible to find a better name for them ; but there would be two classes of rules.

*Sir Austen Chamberlain.*

5749. One question on another subject. Turning to the Courts, and desiring, as you have already expressed your desire, to protect the administration of justice and also to protect Ministers against pressure for patronage, have you considered making appointments in the Magistracy depend, and the Courts depend, upon the High Court, instead of directly upon a Minister ?—(*Sir Samuel Hoare.*) Yes ; we have considered a proposal of that kind, and there is a good deal to be said for it. One of the difficulties is the difficulty, at any rate, in the lower judicial ranks, of the amalgamation of the judicial and the administrative functions of the Government ; the separation of the two is a question that has very often been discussed and for which there is a great deal to be said.

At the same time, there is the administrative difficulty and there is the difficulty of expense. In the lower ranks of the judicial administration there are officials who are doing both administrative and judicial work, and one has got to keep that fact in mind. Keeping that fact in mind, we did not feel that we could go further than we have gone in the White Paper ; but I would certainly be the last person to suggest that there is not a field for discussion and difference of opinion upon questions of this kind. I think it might be worth while hearing Sir Malcolm's view upon the point. (*Sir Malcolm Hailey.*) Sir Austen was dealing with the Magistracy. One can exclude, for the moment, all questions connected with the civil judiciary, the district judges, subordinate judges and munsifs, and confine oneself entirely to the Magistracy. The Magistracy are purely criminal, our judiciary, has, of course, these two definite sides ; the civil side running through district judges, subordinate judges and munsifs ; their appointment, control, etc., forms a somewhat different question, which I have no doubt, will be subsequently raised in the Select Committee—

5750. May I at this point interrupt you to say that your difficulty arises, not in regard to those classes you have named, but to the other classes which you are coming to ?—Yes. I am putting aside for the moment all questions connected with the administration of civil law and am only concerned at the moment with the administration of the criminal law. The great mass of criminal work is done, in the first instance, by magistrates, both stipendiary and honorary. The magistrate, in most cases, is an Executive Officer to whom is given magisterial functions, sometimes also, revenue functions. He is under the control, for administrative purposes, of the District Magistrate, though, of course, for purely judicial purposes, questions of revision, appeal, and so forth, his work goes to the High Court. Now the present system is that these magistrates are appointed by the Local Government ; they are Provincial Service Officers ; their method of appointment at present is, either by competitive examination or by nomination, after consultation with a Public Service Commission. Under the White Paper proposals if the appointment

were by the local Government, that would presumably be a ministerial function. The difficulty of providing that they should be appointed by and come under the entire administration of the High Court, as indeed do the establishment carrying out the civil law, is their combination of functions. You would have to separate their functions entirely before it would be possible to bring the criminal magistracy entirely under the High Court, that is to say, instead of the local Government appointing them being in charge of their discipline, transferring them, and the like, as at present, because they have these mixed functions, you would have to have a separate body of men carrying out magisterial work entirely and therefore entirely under the High Court. There would be a very considerable addition of expense. Of course, also, controversial questions do arise, upon which very differing opinions have been held, as to how far it would be to the real interests of the Executive to separate Executive and Judicial criminal functions. If I might say so, I think that is one of the questions which the Government of the future will have to solve. There would be in the proposals as they stand, power for the Governments of the future to solve that question. They would have to solve it both on the financial and on the administrative side. They would have to make up their minds whether the extra expenditure involved would be too much. They would also have to make up their minds whether it would be possible to ensure the general peace of the country as well under a system by which all the magistracy is brought under the High Court as under a system in which the subordinate magistracy is directed by the District Magistrate. That is to say, it is he who would direct them, whether orders are to be issued under the preventive sections if communal trouble was arising, and it is he also who assigns particular work to them; distributes the class of cases they are to try. Those are two competing systems, the merits of which would have to be worked out by the Governments in the future.

Marquess of Zetland.

5751. On that point, may I ask Sir Malcolm Hailey, supposing the Execu-

tive and Judicial functions were separated, what would be the position of the District Magistrate?—The District Magistrate then on his magisterial side—I mean, in the exercise of his powers under the preventive sections or the distribution of work to his subordinate magistrates—would necessarily come under the High Court.

5752. I see; but you still have one officer at the head of the district who would remain the District Magistrate?—Yes.

5753. But he would be under two different authorities?—He would.

5754. Under the Government, and as far as his magisterial work was concerned, under the High Court?—Yes, that is one of your great difficulties about complete separation.

Lord Hardinge of Penshurst.

5755. In Article 69 authority is given to the Governor after consultation with his Ministers to make at his discretion any rules requisite for the disposal of Government business. Would he still be able to do as he pleases if after consultation with his Ministers he found himself in conflict with them?—(Sir Samuel Hoare.) I did not quite catch that.

5756. Would he be able to give directions for the administration and disposal of Government business if, after consultation with his Ministers, as is prescribed in this rule, he found himself in direct conflict with all his Ministers?—Yes.

Lord Hardinge of Penshurst.] That is what I wanted to know.

Earl of Derby.

5757. Sir Malcolm Hailey, I should like to ask you one question. You mentioned that there should be a Governor's Secretary. Who would appoint that Secretary?—(Sir Malcolm Hailey.) The Governor.

5758. And it would be only for the lifetime of that governorship?—Yes, it would be a personal appointment just as is his private secretary at present.

5759. From the Indian Civil Service?—I contemplate that he would almost always be taken from the Indian Civil Service, but there would nothing to prevent him taking any other officer of

government or, indeed, an officer from outside government, if he thought it better to do so ; but I think it might be taken for granted that as that officer is there to supply him with the local knowledge he does not possess himself, it would be inevitable that he should take him from one of our Indian Services.

5760. And that secretary would be responsible to the Governor and to nobody else ?—Yes, purely.

*Major Cadogan.*

5761. Would not his pay be subject to the Vote of the Legislature ?—(Sir Samuel Hoare.) No. That is already provided for in Article 98.

*Sir Tej Bahadur Sapru.*

5762. Article 96 (b) ?—96 (b) and 98 (v) give you that.

*Lord Hutchison of Montrose.*

5763. There is one question I would like to clear my mind on and that is this : A Governor has on going out his Instrument of Instructions which are passed by the two Houses of Parliament, just the same as the Constitution Act will be, but under his special responsibilities the Governor is under directions by the Governor-General. It says so in paragraph 47 of the Introduction to the White Paper, in which it says at the top of page 24 : "an item relating to the execution of orders passed by the Governor-General." In running his Province, if and when a breakdown or a taking over of Law and Order by a Governor comes about, that Governor would be, to some extent, under the orders of the Governor-General. To what extent is the Governor-General thereby under orders from the Secretary of State at home ?—Constitutionally he is directly under the orders of the Secretary of State.

5764. Arising from that, a Secretary of State could give directions to the Governor as to how he would carry out certain arrangements under his taking over Law and Order ?—Constitutionally, yes.

*Mr. Cocks.*

5765. Sir Samuel Hoare, as far as Article 61 is concerned, you know the

proposal which has been made by Pandit Nanak Chand to divide the Punjab so as to allow the Muhammadan part of the Punjab to join up with the North West Frontier and the other part with the United Provinces. Do you agree with that ?—This is a very old proposal that has been made now, as to whether the Punjab should be divided, taking off the more predominantly Hindu tracts and leaving the part of the Province that is more definitely Muslim. As Sir Malcolm Hailey will no doubt say, this is a question that has been discussed over and over again. We discussed it at the First Round Table Conference, and, although there may be good arguments to be made in favour of it, one very strong argument to be made against it is that it has got very few friends, and we came to the conclusion that whatever might be its merits or its demerits, it was not a question of practical politics at the present time.

5766. Do you favour, or contemplate, setting up a Boundaries Commission as recommended by the Simon Commission ?—A Boundaries Commission for what ?

5767. The Simon Commission recommended the setting up of a Boundaries Commission (they say it is an urgent matter) to investigate the main cases in which Provincial readjustments might be called for ?—I would very much hope that we should not have a Boundaries Commission. I would not like to pre-judge the decision at all now, but I do not want these constitutional questions to get confused in a maze of disputes about frontier delimitations. We have dealt with the two most urgent questions of Provincial redistribution by dealing with Sind and Orissa, and I very much hope we are not going to get into an endless dispute about the boundaries of every other Province in India.

5768. With regard to the appointment of a Governor, is it contemplated in future sending a distinguished gentleman from England or continuing the practice of Civil Servant Governors ?—We wish to keep our hands absolutely free.

5769. We have had some discussions about the collective responsibility of Ministers, and it is mentioned in so many words in Article 67. I understand that the proposal is that the Governor shall choose the Ministers after consultation

with the Minister who is likely to command the largest following. What is the objection to the Governor calling upon this leading man, the proposed chief Minister, and asking him to form a Ministry and to form a Government and to submit a list of names to him for his approval as is done in England?—I imagine, in practice, that is sometimes what will happen, but again I think that is the best way to start, leaving latitude in the matter and keeping in mind the fact that the Governor has a special responsibility which distinguishes his position from the position of the Sovereign in this country, namely, that he is called upon to see that minorities are represented in the government.

5770. A Minister might select a member of a minority in order to get the support of the minority group?—I think very likely.

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5774. Would you be in favour of having that Secretary of the Cabinet as well to keep the Governor informed if he was not present at everything that happened?—I think I would like Sir Malcolm Hailey to deal with this question. My own view is that at any rate in some of the Provinces the Cabinet would not need a whole-time official for work of that kind. If they need a whole-time official by all means let them have one. (Sir Malcolm Hailey.) It was put forward in the Simon Report,

of course as being necessary in order to keep the Governor fully informed of all the proceedings of the Cabinet, and it has been proposed in various quarters that that Cabinet Secretary should have a definite access to the Governor for that purpose. I think most of us now feel that there really would be very little room for an official of that type. He would not have enough to do, and I think most Governors would be perfectly prepared to accept from their Cabinets their own summary of proceedings, and that it would be quite unnecessary to have a separate official for that purpose.

5775. Coming to the question of special responsibilities, Sir Samuel, take (a), the first one, the prevention of any grave menace to the peace or tranquillity of a Province. Do you suggest this should be limited to crimes of violence?—(Sir Samuel Hoare.) No. As the Committee will see, we have left it in general terms of this kind. We think that it is safer to leave it in general terms of this kind, and the more you try to define it more exactly, the greater the difficulties in which you involve yourselves. Here, again, it is the old issue between stating a thing in detail explicitly or stating it in more general terms. We have chosen the alternative of stating it in more general terms.

5776. I think it was Sir Tej Sapru who suggested an additional form of words, saying "arising out of the activities of any person or persons or association tending to crimes of violence." But you would object to that, would you?—Yes; I greatly prefer the words as they are now. I think the more you try to define them further, the more you will be driven into setting out a lot of explicit reservations of various kinds, and in the end from the point of view of Indian public opinion the reservation will look more formidable than it does now, whereas from the point of view of administrative efficiency and ensuring the Governor the power of intervening at proper times, you might find that your definition has tied his hands just in the very way in which you do not wish to tie his hands.

5777. What I am thinking about is certain legislation such as land legislation and other subjects which have been



mentioned, which somebody might see as constituting a grave menace. The Governor might often step in and prevent the Minister who was in charge of that from proceeding with it?—I think that if I may say so, is exactly the kind of case that must be judged upon its own merits. It may well be that neither land nor social legislation of any kind has any likelihood of creating the kind of situation in which the Governor is expected to intervene. On the other hand, you might have extreme forms of legislation of that kind that were likely to plunge the Province into revolution.

5778. It seems to me that if it were not used with the very greatest discretion it would be cutting almost at the root of responsible government?—There is no intention whatever of doing any such thing, and we assume that the Governor would be a sensible person and we assume also that he would wish the Cabinet to remain responsible over the field of responsibility, and that he would only intervene in the last resort, and there is no intention whatever under any one of these safeguards of preventing the introduction of legitimate social and economic legislation.

5779. Under D, the prevention of commercial discrimination, is not really safeguarded sufficiently by paragraphs 122 and 123?—No, because paragraphs 122 and 123 deal with the field of legislation. The equally important field of administration has got to be dealt with, and we deal with it under 70.

5780. That does not refer to legislation at all, I take it?—It is administration that is mainly in mind.

5781. The protection of the rights of any Indian State. What is exactly meant by that, beyond the Federal rights which are safeguarded by the Constitution?—I am quite ready to answer a question of that kind, but it does seem to me that it raises a lot of these questions with the States and the Governor-General rather than the questions of the Provinces. I am in the hands of the Committee. I would add this to my answer. There is a point here that does directly concern the Provinces. The kind of case we had in mind was the need for intervention, supposing, within a Province, a movement was growing up such as the kind of movement of which we have had ex-

amples, in which large bodies of a particular community, or a particular mode of thought, march in from the Province into a neighbouring State and stir up trouble in the State. In cases of that kind we felt there ought to be power to prevent such a movement of that kind, endangering the stability of an Indian State.

5782. The last one is, securing the execution of orders lawfully issued by the Governor-General; does that mean anything more than the orders issued by the Governor-General in the discharge of his special responsibilities?—Yes; it includes the orders under the field of special responsibilities and also orders under the Federal field as well. If Mr. Cocks will look at paragraphs 125 and 126, he will see it is intended to deal with the contingencies covered in those paragraphs, too.

5783. In No. 73, dealing with the Instrument of Instructions, you mentioned twice directions from the Governor-General or "from one of Our Principal Secretaries of State." I only want to ask you this: Is it in your mind, or intended, that more and more the Secretary of State should depend upon the discretion of the Governor-General?—I do not think, constitutionally, anybody could admit that. The Governor-General has got to be responsible to somebody, whatever his powers are, and he must, therefore, be responsible to Parliament through a Minister. I can quite imagine that in the course of Indian developments, Indian opinion, through the Governor-General, will more and more carry weight in Whitehall and Westminster, but one cannot say more than that.

5784. There is one point, and I am rather interested to know what it exactly means. In paragraph 95 you say: "A recommendation of the Governor will be required for any proposal in the Provincial Legislature for the imposition of taxation, for the appropriation of public revenues," etc. In paragraph 45, in the footnote, you say that it justly represents the Constitutional principle embodied in Standing Order 66 of the House of Commons. I want to know whether, in paragraph 95, that is meant to be merely a formal thing, as it is in the House of Commons—that is to say,

no Private Member can initiate taxation, but it is really the Government who does that. In paragraph 95, do you mean it is to be a formal thing on the part of the Governor, representing the views of the Ministry, or does it mean that the Ministry cannot propose any taxation without the consent of the Governor?—No. This does not mean any more than the procedure here. It means that no Private Member can introduce a proposal for a financial grant. It means no more than that. The Governor would be acting here upon the advice of his Ministers.

Lord Snell.

5785. My Lord Chairman, most of the questions I desired to ask have been covered, but if I might ask Sir Malcolm Hailey to clear up one point of doubt, I understood him to say, in regard to the possible need for a Secretariat by the Governor, that such appointments would be made from the Indian Civil Service. I wanted to ask whether it is his view that such appointments should be restricted to British members of the Indian Civil Service?—(Sir *Malcolm Hailey*.) Oh, no, Sir, I did not imply that in any way. When we speak of the Indian Civil Service, we always speak of it as combining both Indians and Europeans. We draw no distinction. In the case of our Secretariat, at present, when we appoint a Secretary, he may be an Indian or a European, naturally.

Major Attlee.

5786. With regard to the Second Chamber, the point in the Second Chamber is that it should be a body with a high qualification and generally conservative. Is that not so?—(Sir *Samuel Hoare*.) It should represent the more conservative elements in the Province.

5787. And it has equal powers with the Lower House?—Under the present proposals in the White Paper, the two Federal Chambers have equal powers; substantially, the powers are equal.

5788. And if they differ, they go into joint Session?—Yes.

5789. That will almost certainly ensure a Conservative predominance in those Councils, will it not?—No, I should not say that.

5790. In the joint Legislature, that is to say. You would have a predominantly Conservative Upper House?—I should be very much surprised if, in any of these Provincial Assemblies, you had voting by solid blocks of that kind, when you take into account the differences, communal and otherwise, in the Provinces.

5791. On a question of a difference of economic interest, the tendency would be that the richer people will have a predominating power, where there is a Second Chamber?—I suppose, generally speaking, that might be true, but an accurate answer would have to depend on the constitution of the Chamber. It depends entirely how you form the Second Chamber.

5792. I am taking it as indicated in the White Paper: certain nominees and a high property qualification for a considerable proportion, as set out in the Appendix?—Yes, the Appendix on page 92.

5793. You will find the qualifications set out rather later, I think, on page 113: "High property qualifications; service in distinguished public offices." That essentially means money and age really, broadly speaking?—If you look at the Appendix on page 92, you will see the suggestions that we make for Bengal and the United Provinces and Bihar.

5794. Quite. A further point on Second Chambers. Is it contemplated that where there are Second Chambers, the Ministers should be drawn from either House?—Yes.

5795. Will they have the right of speaking in both Houses?—Yes, we contemplate they should.

5796. That is not specifically stated in the White Paper, is it?—We have put it in for the Federal Chamber; we may not have put it in for the Provincial Second Chambers.

5797. I think not?—No. I am inclined to think—I do not put it higher than that—that it is a good plan that they should.

5798. Otherwise, you would have a very small Government Bench in one or other House?—Yes, as sometimes happens in other countries.

5799. You have not laid it down, as you say, with regard to the number of

Ministers, but is it not a fact that there is rather a paucity of loaves and fishes at the present moment in the Provinces?—Yes. At the same time you have got to consider also the very important aspects of expense, and the danger of adding to the overhead charges of any of these Governments.

5800. The basket is small, but the question is as to its working. One further question. You were asked with regard to having appointments made by the High Court instead of Ministers?—Yes.

5801. Is there any reason to think that those would necessarily be better made by the judiciary than by Ministers?—(Sir *Malcolm Hailey*.) I think, Sir, that the present procedure,

by which the Provincial Governments always take the advice of a Public Service Commission before making nomination, would, probably, be followed by the High Court also. In that case, I think the class of man that you got would be very much the same in both cases. If I might say so, the real question at issue is one of control, rather than of original recruitment.

5802. The only point is if the Secretary of State would study the experience in this country of the appointments made by judges, he would find a remarkable correspondence in those appointed with the nomenclature of the judiciary of the last fifty years?—(Sir *Samuel Hoare*.) We will keep Major Attlee's point in mind when we consider this question further.

(After a short adjournment.)

Mr. *Morgan Jones*.] I understand we are limiting our questions this afternoon to the Provinces?

Chairman.] If you please.

Mr. *Morgan Jones*.] And you desire any questions on finance relating to the Provinces to be postponed.

Chairman.

5803. Any questions relating to finance which can better be dealt with after the Secretary of State has given his evidence on Sir *Malcolm's* Memorandum?—(Sir *Samuel Hoare*.) It would help very much when we come to our discussion on finance, which is an extremely intricate and complicated subject, if any Members who felt inclined could give me detailed notice of any questions that they intend to raise; otherwise it is such a complicated question that there might be delay in my giving an answer.

Mr. *Morgan Jones*.

5804. I want to ask one or two questions only on this part of the subject. Am I right in assuming that, generally speaking, the powers of the Governor in the Province will be similar to those of the Governor-General?—Yes, with these two exceptions; first of all, the Governor-General has got his power for his Reserved Departments. In the case of the Provinces there are no Reserved Departments. Secondly, the Governor-

General has a special responsibility for maintaining the financial credit and stability of India. There is no such power in the case of the Provinces.

5805. Anyhow they are alike in this, may I take it, Sir *Samuel*, that at any given moment when the Provincial Assembly is discussing a Bill it is possible for the Governor to intervene at any stage when he may think fit, and order the Bill to be withdrawn, or to be amended in a way which he may desire?—If it trenches upon the field of special responsibilities.

5806. Yes, but do I understand that, subject to that limitation, the Provincial Assembly will be free to legislate as it thinks fit, subject to the ultimate veto of the Governor?—Yes, and subject also to its legislating in the Provincial field and keeping out of the Federal field.

5807. Yes, I quite appreciate that. The field of limitation, in respect of the Provinces, is very narrow, I believe?—No, I should say it was very wide.

5808. Perhaps we both mean the same thing; we may be using the words in a different way. I mean that the number of subjects in relation to which the Governor may intervene is very narrow?—Yes, I see; it is the limited field set out in the list of special responsibilities.

5809. Do I understand, Sir *Samuel*, that it is regarded as a desirable thing

Lord *Eustace Percy*.

for the Governor to possess powers to intervene at a stage of that sort? Would not you take the view that it would be far more desirable, if he should be endowed with powers at all, that he should have the right to veto the introduction of the Bill rather than that he should have the right to intervene at any particular stage of the Bill?—It is very difficult to make an exact definition. It is so difficult to contemplate every kind of situation. The position would be as Mr. Morgan Jones with his Parliamentary experience will see, that a Bill may be introduced perfectly harmless in form, and then during the course of the discussions a very dangerous amendment may be introduced and added to the Bill which would give rise to grave unrest. It is that kind of contingency that we have in mind.

5810. I see. Will Sir Samuel be good enough to look at paragraph 122? I ask for information only. What precisely is intended by paragraph 122?—I am quite ready to answer this question, but I would suggest that we might deal with the questions of commercial discrimination more specifically, but, if Mr. Morgan Jones would like to ask the question, I will answer it.

5811. I appreciated before I asked the question that it might properly belong to another portion of our discussion, but it does deal with the question of legislative power, but, if you prefer it, I am quite ready to leave it?—Whichever you like. Commercial discrimination is one of the bigger issues, and I thought it might be better to deal with that rather more specifically. I do not mind as far as I am concerned.

*Chairman.*] Mr. Morgan Jones will know better than I do what he is leading up to.

*Mr. Morgan Jones.*

5812. I simply asked as a matter of interpretation of the clause, and I am quite prepared to leave it to another stage, if it is more convenient to Sir Samuel?—I think it is a question that is really better discussed in connection with the Governor-General's powers. I think it might be better discussed more specifically.

*Mr. Morgan Jones.*] It applies to both Assemblies, both Federal and Provincial, I quite agree.

5813. Secretary of State, could you tell the Committee quite briefly on what general grounds the Government decided not to accept what I think was the recommendation of the Statutory Commission, that the High Courts of the Provinces should be federalised and placed under the Central Government?—Here again, I was rather assuming that we should go more specifically into questions connected with the Judicature, but to give an answer in a single sentence to Lord Eustace, my answer would be that it is our general desire to give as full autonomy to the Provincial Governments as we can. The Provincial Governments are concerned with the Courts from various points of view, for instance, from the administrative point of view, and from the financial point of view, and we thought it was difficult to go upon our general line of Provincial autonomy, and take this body of work out of the Provinces and give it to the Federal Government.

5814. In view of the fact that it raises the whole question of the Judicature, I think I had better reserve any questions on that, subject to my Lord Chairman's directions. The only other question I wanted to ask was this: The list of special responsibilities of the Governor, taken together with Proposal 73, creates, does it not, this situation, that it is only in matters coming under one of the special responsibilities that the Governor can under his Instrument of Instructions act contrary to the advice of a Minister?—Yes.

5815. What will be the position of the Governor's Instructions if they are mentioned in the Act, and are subsequently approved by both Houses of Parliament. Will that give the Instrument of Instructions a legal validity?—It would give the Instrument of Instructions a Constitutional validity within, I assume, the Terms of the Constitution Act.

5816. It would be merely a Constitutional validity. Supposing the Governor did order some executive action without the consent of his Minister; supposing it were known that his Minister dissociated himself from that action, and supposing a case were brought into the Courts to declare that action of the Governor invalid on the ground that it did not properly come under his

special responsibilities, could the Governor's Instructions be invoked as a legal document?—My answer would be no such action so far as I can see could arise. The Governor's decision is the last word.

5817. At any rate it is the intention of the Government that the Instructions should be so worded as to make a recourse to them in the Courts impossible?—Certainly, but, much more important than that, whether the question arises out of the Instructions, or whether it does not, the last word would be the Governor's, and it could not be challenged in a Court of Law.

5818. That is, at any rate, the intention of the Governor. What is the position with regard to appointments?—Appointments do not, as a general rule, come within the Governor's special responsibilities?—Yes.

5819. He could not, for instance, argue that the mere appointment of one or two Police Officers constituted a grave menace to law and order, but is the Governor then to have no power to overrule his Minister in the case of appointments (other than, of course, Secretary of State's appointments which are provided for) in the Police service or the Magistracy?—No, under the White Paper we do not give any special powers other than general powers for safeguarding the interests and the rights of the services, and for carrying out the special responsibility.

5820. So, in fact, all the appointments in the Judicial and Executive Services, except the Secretary of State's services, would be in the hands of the Ministers, and the Governor, while he would be consulted, would be unable to make any appointment except the appointment recommended to him by the Minister?—The Governor under the White Paper proposals would intervene if he thought his field of special responsibilities was being endangered. He has general powers for intervention in that case.

5821. Take a thing right outside the question of Law and Order?—Take the appointment of the Head of the Irrigation Service, or the Canal Department. The Governor would have no real say in the appointment of a very important official of that kind?—I would have thought myself that the Governor of the

Punjab would be in the closest touch with his Ministers, and that is just the kind of question that he would discuss with the appropriate Minister, and upon which I should think the Minister would attach a good deal of weight to his view. That is the way I expect it to work.

5822. But constitutionally, under the Act and the White Paper, the Governor will have no constitutional power with regard to such appointments except that they will run in his name?—Yes, except within the field of his special responsibilities.

*Sir John Wardlaw-Milne.*

5823. I want to ask the Secretary of State one question arising out of something that he answered before. When he was asked about the possibility of the Inspector-General of Police and District Inspectors-General of Police having direct access to the Governor-General and the Governor respectively he said he thought it would be better that it should rest in the Governor's discretion to make rules as to the conduct of business, and therefore as to whom he should see. Has it occurred to him that it might be very difficult for Governors in different parts of India to lay down differing rules on this subject? Has it occurred to the Government that, although the conditions might be different in the Provinces there might grow up merely, for example, a practice that the Governor did not lay it down that a District Inspector-General of Police should have direct access to him, and, that having become the custom, it might be difficult for the Governor in one particular Province, although it was necessary, to make an effective new rule?—I should not be afraid of a variety of procedure. I base that statement upon the impression that has been made upon me very often by my talks with people who come from the different Provinces, and the one thing that has impressed itself very much on my mind is that what is very much required in one Province may not be required at all in another Province.

5824. I think that will be understood by Indian Ministers?—As Sir Malcolm reminds me, there is very great difference of practice at present.

that that would be a great change for the better.

5836. Then might I go on to Proposal 83, the disqualifications under the existing rules and regulations; I understand that persons convicted of various serious offences are under disqualification, but there is nothing said about that in Proposal 84?—I think Proposal 84 may well be further considered. We have been in some doubts about it for this reason: We have found in our inquiries that, judged by the experience of other countries, and even the experience of Governments in the British Empire, disqualifications of this kind very often are not much good. I would like the Committee and the Indian Delegates to look in greater detail into these questions. It may be necessary to put these disqualifications into the Act. At the same time, if they will study the experience of other countries, they will find that objectionable people have none the less effected entry into these various Assemblies.

*Sir Joseph Nall.*

5837. Would Sir Samuel say why he prefers, or why it is proposed, to rely on Instruments of Instruction approved by Parliament rather than to include the matter of such Instructions in the Act?—For several reasons. First of all, there is an element of greater flexibility in Instructions, and I think what everybody wants to avoid, if we can avoid it, is to have new Constitution Acts whenever any modification is made in the Constitution. My own view would be that, whilst Parliament can maintain its sovereign power in so far as it gives sanction to the Instructions, it does enable it to have a greater flexibility in dealing with questions of this kind than it would have if it was necessary always to have a new Constitution Act. That is our main reason.

5838. Will the Governor-General and the Governors, as Agents of the Crown, derive any other authority except that which they get from the Act and the Instruments of Instruction?—So far as the Federal Constitution goes, my answer is, no. When, of course, it comes to the wider field of paramountcy, then other issues arise, and also, as Sir Malcolm Hailey reminds me, questions con-

cerned with the prerogative of the Crown.

5839. So far as instructions of authority relating to treaties with the States are concerned, that will not be interfered with by the new legislation in respect of any States not in the Federation?—No. We are keeping questions of paramountcy completely out of the Act altogether, for the reason that we regard them as direct relations between the Crown and the States and not within the purview of the Federal Governments at all.

5840. So it would be fair and clear to say that any matters of that kind would not become questions of debate in Parliament on Instruments of Instruction. They have not been in the past, and there would be no change?—It is not contemplated that there would be any change in the procedure. The relations remain Crown relations just as they are at present.

*Marquess of Salisbury.*

5841. But I understood the question was whether the matter in the States might be matters of discussion in the Assembly, was it not?—No; it was whether they would be included in the Governor's instructions, and as such would be susceptible to discussion in Parliament.

5842. I apologise?—As a matter of fact, as far as I know, there is nothing Constitutionally to debar Parliament from discussing any questions of paramountcy; but we do not contemplate that this new procedure with instructions should vary that position.

*Sir Joseph Nall.*

5843. But whilst, at the present time, there is nothing to debar discussion in Parliament on those matters, in fact the explicit vote of Parliament is not necessary for the giving of any instructions?—I would not like to say that. I would have thought that Parliament could, if it so wished, have criticised the Secretary of State and the Government for any action that they took within that field, and any advice that they gave to the Crown, but that would be quite outside the Federal Constitution.

5844. I pass to another matter. Several witnesses raised apprehensions

regarding the absence from the White Paper proposals of provision for official languages. Has the India Office any proposals to make on that, or were there any reasons why such a provision was omitted?—I think that is a point to be considered. My own view would be that it is safe to leave things as they are in the White Paper, for this reason: That with the great diversity of languages in India, and the fact that so many educated Indians use English as one of their main vehicles of communication, we may rest assured that English will remain the official language, but, by all means, let the Committee and the Delegates consider the point whether they would like to emphasise that fact in the proposals.

5845. I suppose it is fair to say that some of the languages in India are just as foreign in other parts of India as English might be to any part of India?—I suppose that would be so.

5846. And, therefore, it is not really a fair presentation of the case to describe English or English officials as being aliens. Are they any more alien than some parts of India are to other parts?—I think that must be a matter of individual opinion.

*Major Cadogan.*

5847. My Lord Chairman, the Secretary of State has already answered all the questions I desired to put to him, except one, if I may put that to him. Am I right in assuming that there is nothing in the suggested Constitution that would qualify the transfer of Law and Order to a responsible Minister in the North-West Frontier Province?—No; there is the provision of the special responsibilities of the Governor for Law and Order; further than that, there is paragraph 47 of the Introduction, in which it is set out that it is intended to draw the attention of the Governors to their responsibilities for the maintenance of peace and tranquillity, and so on. Those clauses would cover every Governor in every Province.

5848. May I draw your attention to a sentence on page 323 of the First Volume of the Statutory Commission, to this effect: "The question of Law and Order, which in other parts of British-India is a domestic and internal matter, in the North-West Frontier Province is closely

related to the subjects of foreign and diplomatic policy and of Imperial defence." May I also remind the Secretary of State that the Commission laid great stress upon the supreme importance of close co-operation between the Police in the districts, the Frontier Constabulary and the Political Agencies, and would it not be rather difficult to secure that co-operation, if Law and Order in the North-West Frontier Province were handed over to a responsible Minister?—If Major Cadogan would look at page 55 of the Proposals, he will see that we do contemplate that the Governor-General should treat those kind of questions exceptionally—Paragraph 70 (h). And Major Cadogan will also remember that we keep the tribal tracts directly under the Governor-General. I think that is a matter bearing upon the question he has asked me, which is a question based, as I understand it, mainly upon the needs of Indian defence.

5849. Upon the necessity of keeping the administrative districts and the others one for the purposes of Law and Order?—Yes. My answer would be that, first of all, the tribal tracts are kept directly under the Governor-General, and it may well be that, in the interests of Indian defence, he may have to take special action outside the tribal tracts. But here again I would say it was a mistake, admitting the whole time the necessities of Indian defence, to make a big distinction of principle between the North-West Frontier Province and the other Provinces. By all means, let us make quite sure of everything that is connected with defence, but after that, I think the Committee will find, upon further consideration, that there are many objections against isolating one Province from the rest, and applying to it totally different treatment.

5850. I quite see that. I am sorry to press the Secretary of State, but I think this is a matter of great importance. I would like to draw his attention to another passage in the Statutory Commission Report, page 322, Volume I, where it says: "If difficulties arose, they would involve a reference to the Government of India, and smooth and rapid working which is so essential in an area constantly exposed to the danger of tribal raids, and to outbreaks of passion

and violence, might be impeded." Would that be a very great danger on the Frontier?—I think it would be, certainly, a great danger then, just as it is a great danger now, but I do not really see how the danger is going to be increased under our proposals. The Governor of the North-West Frontier Province will hold two positions; he will be Governor of the Province and he will also be Agent to the Governor-General for the tribal tracts, and communication will be just as close about the tribal tracts with the Governor-General, under the White Paper proposals, as it is to-day.

5851. He does not now have to refer any action he takes to a responsible Minister?—Nor would he, under the White Paper. So far as the tribal tracts are concerned, he is the Agent of the Crown. There is no intermediate intervention of any Minister or any Governor.

5852. There is only one other small point I want to raise with the Secretary of State. In reply to Major Attlee on the subject of the composition of Second Chambers, I suppose what you have in your mind for the qualification for the Second Chamber is experience, more than anything else; you want men of experience, I mean, when you said it was to be a conservative element, you really do not require it to be so much of a conservative element as that the Second Chamber should be composed of men who have had experience of men and affairs. That is really what is at the back of your mind, I presume?—I think any Second Chamber, in the nature of things, is pretty certain to be a more conservative body than the First Chamber. I do not mean that in any party sense at all, but the essence of having a Second Chamber is that you wish to have a steadying body for revisory or other purposes. I do not think I would restrict my reason to the reason of experience. I would say I would try to get into the Second Chamber interests that may not be so effectively represented in the First Chamber.

5853. Perhaps you will agree with me that men of experience are more likely to be conservative than those who have had no experience?—I expect you and I would agree, but I am not quite sure that our friends on the right would.

Lord Rankeillour.

5854. Secretary of State, I think you said this morning that the Instrument of Instructions would be issued by the Government subject to Parliamentary vote. I confess I do not quite see how that is covered by paragraph 64?—I do not quite follow Lord Rankeillour's point.

5855. A positive Parliamentary vote would appear, under paragraph 64, not to be required for this?—What we have principally in mind is that the Instructions should be laid on the Table of both Houses, and there should be an opportunity for both or either House to vote upon them, if they wish.

5856. But even if they did so vote, would that have a binding effect? It only says "make representations"?—Yes. The reason that it is put in that form is this, that with Instructions, constitutionally, we have to be very careful not to impinge upon the prerogative of the Crown; that is the reason for using those words.

5857. And you think, as a matter of fact, that any representation that was made would be given effect to?—Certainly, that is what we contemplate.

5858. What would be the opportunity?—It would be easy enough in the House of Lords, but in the House of Commons it would probably come under exempted business, and only entered upon after eleven at night?—No, I should contemplate a very important question like this being given a much greater opportunity for discussion. The Secretary of State would have to put the Instructions down and would have to give the House of Commons time.

5859. Would it not be possible to put: "Shall not take effect until such opportunity has been given and taken advantage of"?—That is very much a question of drafting, and I would not like to give an opinion upon it here and now, but I would again like to repeat to Lord Rankeillour that in any drafting we have got to be very careful not to impinge upon the prerogative of the Crown.

5860. I think the Chief Whip in the House of Commons would always wish it to be taken after eleven, would he not, probably as a matter of time?—I should have thought not with a question of



immense importance like this, at the beginning of a great Constitutional chapter. I would have thought emphatically not.

5861. Then, of course, there may be amendments, and they would be subject to the same rule?—Yes.

5862. Now there was one point raised first by Lord Eustace Percy, and then by Sir Reginald Craddock. I confess I do not think it is quite clear now, though I dare say it may be covered somewhere else, that is directions given by the Governor-General. Paragraph 72 certainly appears to contemplate that those directions will be given when the Governor is taking action for the discharge of special responsibility or special discretion. In other words, that the initiative will have to come from the Governor. Is it covered anywhere else, that until he has taken such action, the Governor-General may direct him to take such action. In other words, he may tell him that a situation has arisen in which he must make use of his special powers?—If it is not clear, we must make it clear.

5863. You agree that it should be made clear?—I agree that it should be made clear.

5864. Now with regard to the possible dismissal of Ministers, you said something which appeared to me to imply that it was only when the case of special responsibility had arisen that a Governor could, in practice, whatever the Constitutional theory would be, dismiss his Minister; it would have to be in discharge of his special responsibility?—Yes, I think that would be my view, generally, subject of course to the normal powers of the head of a Government in relation to his Ministers.

5865. But in the case of two of the Australian States, within the last few years Ministers have been dismissed by the Governors on other grounds. Would there not be an equal power in India?—I should like to consider that point further.

5866. If I remember right, the Prime Minister of New South Wales was dismissed because he gave orders that the lawful debts were not to be paid; I think that was so?—In a case of that kind, the Indian Governor would be able to take action under his special responsibilities.

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Sir Joseph Nall.] Not in the Province.

Lord Rankeillour.

5867. In the Province?—Yes.

5868. I do not want to press it, if you have not the matter before you, but I do not see on the face of it that it is so. Now in the case of paragraph 69, it says: "The Governor will whenever he thinks fit preside at meetings of his Council of Ministers." I suppose it is possible that you might find a Governor who was inclined to take the line of least resistance. Might it not be better to put it in this form: "shall ordinarily preside," in order that he may get completely in touch with the work that is going on?—I would myself prefer to leave a latitude, and one has to assume that the Governors will be people who are prepared to take their duties very seriously, and I would much rather leave it to the judgment of a Governor whether he presides or whether he does not.

5869. I will not say in India particularly, but taking the Colonies, I will not take the Dominions even, but now and then Governors have been appointed by the Colonial Office who do no more than they are actually required to do, have they not?—I could not answer for the Colonial Office; one Department is quite enough to have on one's hands at one time.

5870. But we do get some general knowledge, I think, whether we are in a Department or not?—We get some general knowledge, and each of us is at liberty to interpret it as he wishes. Lord Rankeillour's view on this point would be just as good as mine.

5871. Thank you very much. Now with regard to the question of particular safeguards and with regard particularly to the question of Bengal, I think you said that it would be rather invidious, and it has been said in evidence, to make an exception of one Province. Is that not so?—Yes.

5872. And the same question might arise in another Province possibly?—Yes.

5873. Now I would ask you to look at paragraph 71. That appears to contemplate a slowly developing situation in which the Governor will take the advice of his Ministers, and so on, before he acts, but, as a matter of fact, in Bengal, the situation is normal, the

situation of terrorism, and so on, it is endemic, and, therefore, the question would arise from the very first ; it would be there all the time ?—It is very difficult to say whether it will be there all the time, or whether it will not be there all the time, but I quite agree it is an exceptional danger and it has been endemic in Bengal now for many years.

5874. What I mean is this : If the White Paper were passed as it stood now, the special branch would come under the first Bengal Ministry ?—The Governor and the Governor-General would have to decide at the time.

5875. But that seems to me a little inconsistent with the process of a developing situation apparently contemplated in paragraph 71 ?—No, I do not think so ; I do not quite see why.

5876. Because there, after considering such advice as has been given him by his Ministers, and so on, that seems to contemplate some time passing ?—If that be so, it is a question of drafting, but we were certainly contemplating that if in Bengal or in any other Province there was a situation in which it was necessary for the Governor to take exceptional powers, we should not have to wait.

5877. Would it be possible (I do not see it in the White Paper) for the Governor-General from the very first to give orders in Bengal, and it might be in other Provinces that the Governor should exercise his special responsibilities from the first ?—Yes.

5878. That does not appear on the face of it at present ?—I would say, without entering into an argument, it is implicit in a good many provisions of the White Paper.

5879. You remember that the Police in their evidence said that the initiation of the Constitution would be a very critical period, and the first elections, particularly ?—Yes.

5880. That rather emphasises the point I am trying to make does it not, not only, perhaps, in Bengal ?—Yes, and I would say to Lord Rankeillour that if there is a situation that calls for the exercise of any of these special responsibilities, we do not contemplate that there would be delay in applying it.

5881. And in the end the Central Government would have to be the judge

of that ?—No, not the Central Government ; the Governor-General and Parliament.

5882. I beg your pardon ; I meant the Governor-General and his staff ?—Yes.

5883. Now there was a point raised by Lord Salisbury : Supposing there were official disobedience on the part of officials and the Governor assumes his special responsibilities, he would be able to dismiss an officer, presumably ?—Yes.

5884. Could the officer challenge that dismissal ?—In the case, of course, of the Secretary of State's services, there is the Parliamentary guarantee here, but the Secretary of State would have to take responsibility for a dismissal of that kind with his Council or whatever may be the body that advises him under the new Constitution.

5885. And those who were not in that category, would they have any appeal or redress under those circumstances ?—Sir Malcolm tells me that they would be able to memorialise the Governor ; but, presumably, the Governor having given the decision, the memorial would not have very great effect.

5886. That would be the end of that ?—Yes.

5887. Is there any procedure in the Indian penal code for any summary trial for recalcitrant officers ?—No

Lord Rankeillour.] Now I am afraid I must come back to one or two questions on the Provincial List. On one or two of them, I have had a little friendly controversy with Mr. Zafrulla Khan.

Mr. Zafrulla Khan.] On that, would it not be best if we could have a note from somebody who has had to do with it as to what is the present position, so that we can compare the position at present, with that which is proposed.

Lord Rankeillour.

5888. I quite agree with that, but I want to ask, not on merits at all, but what is the effect of certain provisions. For example, on page 117, No. 50, you find Police is an exclusively Provincial subject. That, surely, implies, except so far as it is contrary to the code of Criminal procedure, that the Provincial Government would make laws entirely

transferring the basis of organisation, and discipline of the Police. Is that the effect of the construction?—I am going to ask Sir Malcolm to deal with this point, because he will deal with it from his own administrative experience. (Sir *Malcolm Hailey*.) The effect of this would be that the Police Act which is now a General Act for all India, would become liable to local legislation. That legislation could only affect the organisation of the Police and its administration. It does not affect any powers that the Police possess under the Criminal Procedure Code.

5889. No, but it would affect the organisation?—Yes.

5890. And consequently their discipline?—Their discipline; yes.

5891. That point was raised I think by the European Association or by the Police themselves—I do not know which—on the question of the possibility of the creation of a Federal Police Force. The inclusion of Police in the purely Provincial list would prevent that, would it not?—(Sir *Samuel Hoare*.) I have never been able to see myself how you could fit a Federal Police into an Indian system in which the Provinces are autonomous, and in which the States are sovereign. I have never seen, and I cannot now see, how you could fit that kind of Service into the kind of scheme that we are contemplating for India, and if there was to be any central organisation I do not see how it could be Federal. I think then, almost inevitably, it would have to be under the Governor-General. I do not argue the merits, or the disadvantages of an arrangement of that kind now, but if there is to be an arrangement I do not see how it can be Federal.

5892. I took the word from the statements of some of the witnesses, but, anyhow, if the Police is to be a purely Provincial subject as far as legislation goes (I am not talking about merits) the effect of this No. 50 on page 117 would be to prevent it, would it not?—To prevent its becoming what?

5893. To prevent its being created at all—a Federal Police?—It would prevent its being Federal, yes.

5894. It would prevent any Federal Police being appointed?—Yes.

5895. I only wanted to get it on construction, not on merits?—Yes.

5896. I come back to what I have raised before, but it has never been quite cleared up: that is, the constitution and organisation of all the Courts within a Province. That is No. 28 on page 116. That would mean that the Courts could be set up under such conditions as regards the personnel as the Provincial Legislature might prescribe?—Yes, subject to the fact that the higher appointments are made by the Crown.

5897. I am talking of the subordinate ones?—Yes.

5898. Not to go to anything more extravagant it might be made a rule that nobody should be made a subordinate judge who had not graduated at a particular university. That is a possibility?—I would say, off-hand, without expressing a considered opinion upon a case of that kind, that it would certainly raise the whole issue of discrimination and that the Governor would be justified in intervening.

5899. But it would not be racial discrimination?—No, but the discrimination contemplated in the White Paper is, not restricted to racial questions.

5900. Not altogether, but it could prescribe conditions and qualifications for the subordinate judges?—Yes, I think that is so.

5901. And no higher authority could interfere because this is a purely Provincial subject?—But to take your own case: I cannot conceive a case of that kind in which appointments were restricted to a particular university not raising all sorts of other issues, first and foremost amongst them, the minorities issue.

5902. I only gave one case, but still it does put the qualifications, be they what they may, under the discretion of the Provincial Legislature?—Yes, that is so.

5903. No. 30 on page 117, except with regard to the Federal and concurrent powers, would allow the Provincial Legislature to change the jurisdiction of the Courts within the Province?—(Sir *Malcolm Hailey*.) Yes, within their own list of subjects, within their own scope of legislation.

5904. That is to say, on points within their own list of subjects they could give

a final jurisdiction to a subordinate court or transfer a High Court jurisdiction in respect of some of those subjects to a subordinate court?—Yes, they could do so, subject to any powers that a High Court has under Letters Patent.

5905. With regard to these particular subjects that is not clear that they could not override the Letters Patent with regard to these particular subjects?—Letters Patent, I think I am right in saying, confer powers that are outside the Indian Statute entirely but are derived from prerogative.

5906. Do not you want a qualification here?—That might have to be done. But these lists here have not been finally considered as yet. They are put in, as has been explained, largely as illustrative, and it is quite clear that a good deal of very technical examination will have to be made to these lists to see if any point arises such as that to which Lord Rankeillour has called attention.

[Lord Rankeillour.] I was not really wishing to go into merits, but only on construction. That is all I wish to ask.

#### Marquess of Zetland.

5907. Sir Samuel, would it be open to a Governor under Proposal 69 to make a rule for the disposal of business in these terms: "It shall be the duty of every Secretary to Government to submit to the Governor any matter which comes within his purview affecting the Governor's special responsibilities"?—(Sir Samuel Hoare.) Yes.

5908. Might I go so far as to ask you whether you would regard that as a reasonable rule of business?—It is very difficult to give a general answer to a question of that kind.

5909. Then I will not ask you?—I think one must leave it to a Governor in his Province to make the arrangements that will ensure his having proper powers and will, at the same time, ensure the greatest amount of co-operation between himself and his Ministers, and I would rather not say, therefore, that I approve or disapprove of a particular form of words, as I should like to leave it open to the Governor on the spot.

5910. Still on the subject of the Governor's special responsibilities, I think there is a good deal in what I

think was at the back of Sir Reginald Craddock's mind, namely, that there will be a greater danger really of the Governor refraining from acting in the discharge of his special responsibilities than of his stepping in and interfering with the business of government too often. With that feeling in my mind, I would like to ask you whether you have considered whether the special responsibilities which are allotted to the Governor under 70 (b) and 70 (d), that is to say, the protection of minorities and the prevention of commercial discrimination, might not be equally well safeguarded if these matters were left to the Courts?—No, I think very decidedly not. I think that to leave these questions to the Courts would be quite inadequate. First of all, I think that in the field of administration there will be acts committed or threatened, or there may be acts committed or threatened, that would not be susceptible to a legal decision. Secondly, I think that in any case it would take a long time and it might be much expense to get a legal decision, and I think on that account it is quite essential that the Governor should have these powers in addition to any powers that a citizen may have from recourse to the Courts.

#### Marquess of Salisbury.

5911. You say "in addition"?—Yes.

5912. Will there be all the powers with the Courts as well?—Yes, certainly, and it would be open to anyone to challenge the validity of an Act on the ground that it impinged upon, we will say, the field of commercial discrimination.

#### Marquess of Zetland.

5913. There is only one very small point in connection with 70 (a). Would the Secretary of State tell the Committee what is the distinction which he draws in his mind between the peace of a Province and the tranquillity of a Province?—The reason we have put this phrase in is mainly historical. For some reason or another, peace and tranquillity have always been bracketed together in Indian Constitutional Acts.

[Sir Tej Bahadur Sapru.] Not only in India but in English law, too. You have

borrowed it from English law. There are old statutes where this phrase occurred, "peace and tranquillity." It is a very well understood phrase.

Marquess of Zetland.

5914. There is only one other question. That is in connection with the situation which might arise under Proposal 71 which has already been discussed this morning, namely, the situation in which the Governor decided that he must take over the administration of a particular part of the Department of Law and Order. Let us call it the C. I. D. for the sake of example. I only want to be clear in my own mind as to what the procedure will be in those circumstances. Ordinarily, of course, all cases come up to the Minister in charge of a Department through the Secretary to Government concerned with that Department. Supposing the particular part of that Department is taken away from the purview of the Minister and placed under the direct control of the Governor, will the Secretary to the Department bring his cases, so far as they concern that particular part of the Department direct to the Governor, or would he submit them through the Minister?—It must depend upon the actual situation. Presumably, if he is forced to take this action, the Governor is at variance with the Minister. If the Governor is at variance with the Minister, obviously he would be free to instruct any official to bring him the reports direct and not through the Minister, or, if he wished, he could create a special officer or Department to deal with the situation.

Marquess of Reading.

5915. There are one or two matters I wanted to clear up. With regard to the Letters of Instruction, would you tell me whether I am correct in thus stating the views which you have expressed? I am only doing it to see that there is, as I think, nothing between us about it. As I gather, Letters of Instruction are really letters from the King?—Yes.

5916. In the present case what you are proposing, as you have explained, is to have certain matters prescribed which are to be in the Letters of

Instruction, and which matters will be laid before Parliament?—Yes.

5917. But that does not interfere in any way, does it, with your power as Secretary of State, if you wish, to add to a particular Letter of Instruction to a Governor, or to a Governor-General, provided you do not put anything in it which is inconsistent with the standing Instruction which has been before Parliament. That is right, is it not?—Yes, that is so.

5918. Of course, that leaves it open to you to add anything which you think may be required without having to go to Parliament?—Yes.

5919. And, consequently, when you are issuing Letters of Instruction, or, rather, when Letters of Instruction are issued to a Governor-General or to a Governor, what you would look to first would be to see that you have in those Letters of Instruction all those matters which have been prescribed and placed before Parliament, and then such other matters as you may think necessary to insert, but you would not have to place that Letter of Instruction before Parliament, would you?—I would have thought the subsequent instructions would go as directions from the Secretary of State either to the Governor-General or to the individual Governors.

5920. That is what I thought?—But they would, of course, have to be within the letter and the spirit of the standing Instructions.

5921. Certainly. You would have to include all those matters which Parliament has said should be in the Letter of Instructions?—Yes.

5922. In addition you may put in whatever you desire, which is not inconsistent. That is the position, is it not?—Yes, I think substantially it is.

5923. I think there is only one other matter that I want to put to you. You were asked by one or two Members of the Committee about the danger that might arise in the event of a Governor refraining from taking action and taking the easier course. In such a case as that there would be no difficulty in the Governor-General prescribing the course which should be taken, would there?—None.

5924. That would be for the Governor-General to take if he thought it right?—Yes.

5925. Then the Governor would have to conform to those orders ?—Yes.

*Archbishop of Canterbury.*

5926. I only want to ask one or two questions to make a few points clear, Mr. Secretary of State. It has been obvious from the discussion that great importance now attaches to Proposal 69, as a means of meeting many difficulties which have hitherto been expressed. I think you have made it clear that under Proposal 69 it will be open to any Governor to give instructions, or to make rules, that, say, the Inspector-General of Police should have direct access to him. I think you made it clear that that would be permissible under Proposal 69 ?—Yes.

5927. Would it also be permissible to make a rule that a similar right of access should be given by him to the Cabinet—to the Ministry as a whole ? That would come under Proposal 69 ?—A similar right of access of the Inspector-General to the Cabinet ?

5928. Yes ; that was suggested ?—I suppose it could be done, but I would have thought that if things were working well the Cabinet would have in the Inspector-General when they wished to have him in, and if things were not working well I am not sure that the demand of a right of access would do very much good with the Cabinet. I have not considered explicitly His Grace's point, but my present view would be that it is included if it is needed.

5929. Whether wise or not ?—Yes.

5930. Would Proposal 69 also conceivably make possible to rule by the Governor insisting that in certain Provinces, or in certain circumstances, the Special Intelligence Department of the C. I. D. should be placed exclusively in his control, apart altogether from his acting in view of his special responsibilities. I merely want to know, would it be possible for him under this rule to treat that as a rule for the conduct of Government business ?—No, I cannot see that it can be brought in under Proposal 69, a paragraph which deals with the conduct of business. If action had to be taken on the lines suggested by His Grace it would have to be taken under Proposal 70, namely, under the exercise of the Governor's special responsibilities.

*Archbishop of Canterbury.]* I just wanted to be clear about that. With regard to the very important matter which Lord Reading and others have dealt with, of the Instructions to the Governors, I think you made it quite clear that your view is totally against making any discrimination in the Letters of Instruction between one Province and another. You have made that quite clear.

*Marquess of Salisbury.*

5931. Did you go as far as that, Mr. Secretary of State ?—I was just wondering exactly what were the implications of His Grace's question. It is perfectly true to say that I do not wish to see a discrimination upon broad issues of policy between one Province and another. I think I would like to consider a little bit further the question of details in the Instructions as between one Province and another. I do not think I contemplate differences. In any case they will only be questions of detail apart from the case of the Governor of the North-West Frontier Province who, owing to his responsibility both for the Province and for the tribal tracts, would have included in his Instructions some kind of special paragraphs.

*Archbishop of Canterbury.*

5932. I think it has also been fruitfully brought out to-day that there may be a very useful distinction between the Instrument of Instructions to the Governors which it would be desirable to make as uniform as possible, and which would receive the special sanction of Parliament, and the other instructions which would be given by the Secretary of State, or by the Governor-General. Would not the cases of special Provinces like the North-West Frontier Province, or it even might be Bengal, be recognised not in the Instrument of Instructions, but in these quite different Instructions issued by the Secretary of State or the Governor-General either originally when the Governor took up his office, or at any subsequent stage that seemed to them to make it desirable ?—That is the way in which we contemplate things will work out under the White Paper.

5933. Just one question with regard to the question of the Courts. Am I right in thinking (forgive my ignorance) that

the Magistrates have considerable judicial as well as executive functions in criminal cases in the Provinces ?—(Sir *Malcolm Hailey*.) Yes, that is so.

5934. Supposing the Magistrates were all appointed, as has been suggested, by the High Court, and not by the Provincial Legislature, would not there be risk of very serious and awkward confusion between Executive and Judicial functions ?—The general tenor of my previous answer was that you could not bring your Magistrates entirely under the control and recruitment of the High Court until you had separated their functions. It would be impossible to do so at present.

Marquess of *Reading*.] May I ask one question which arose, I think, from a slip in the question. It is not intended that the Magistrate should be appointed by the Provincial Legislature, is it ?

Mr. *Zafrulla Khan*.] No, by the Local Government.

Archbishop of *Canterbury*.] I beg your pardon ; by the Ministers.

Marquess of *Reading*.] I thought it was a slip.

Archbishop of *Canterbury*.

5935. A question about Second Chambers. If I remember rightly, the Associated Chambers of Commerce gave us to understand that quite recently there has been a considerable change of Provincial opinion, leading them to be more in favour of Second Chambers than at one time they had been. Can the Secretary of State give us any information about that ?—(Sir *Samuel Hoare*.) I think on the whole it would be fair to say that in certain Provinces the feeling in favour of Second Chambers has somewhat grown, but it would also be fair to say that the opposition to Second Chambers in other Provinces appears to be pretty strong.

Marquess of *Salisbury*.

5936. My question really only has reference to this much debated question of paragraph 64, the Instrument of Instructions. Sir Joseph Nall put a question and my Noble Friend, Lord Rankeillour, did also as to the comparative merits with the actual putting of provisions into the

Constitution Act. I believe the Secretary of State is going to look into this question of the Instrument of Instructions with a view of laying before us a model one. I wonder whether he would recollect that the Instrument of Instructions will be in a very different position from an ordinary Bill, because the difficulty of amending it by the two Houses of Parliament will be very considerable. In the first place, as my honourable friend point out, there is no obligation upon the Government to take any notice of the suggestions which are made in either House of Parliament, whereas, in a Bill, of course, they have to take notice. Then again, supposing the two Houses do not agree in the suggestions which they make, I do not know whether the Secretary of State has considered what would happen then. Of course, I only point these things out because I want him, when he is looking into the matter, to think of them. An Instrument of Instructions in the conditions put in the White Paper can never occupy exactly the same position as a Bill ; it is very different in all its incidents, and, therefore, it would not be the same protection to anybody who was anxious about what the conditions were to be when the Governor would act. It would not be quite satisfactory to tell him : "We will not put it into the Constitution Act ; we will put it into the Instrument of Instructions" because that is not subject to the action of Parliament in the same way ?—(Sir *Samuel Hoare*.) I think Lord Salisbury's criticism would be valid if we were relying exclusively upon the Instrument of Instructions. We are not. The substantial powers will be in the Act itself. The Instrument of Instructions will be used, as it always has been used in the past, for directing the way in which those powers should be exercised. As to his Parliamentary point, as to what would happen if both Houses do not agree, exactly the same question arises with an amending Act, with this one difference, that an amending Act would come under the Parliament Act ; Instructions would not ; but, in any case, I will certainly at some stage in our discussions put in some draft Instructions at greater length, and Lord Salisbury can rest assured that we have very fully considered the kind of difficulties that he

has just reached, and, naturally, we will take note of anything that he says upon the subject.

Marquess of *Salisbury*.] I will not press the matter further now.

Lord *Eustace Percy*.] I hope, before we leave that point, that Lord *Salisbury* will realise that if he put into the Act of Parliament the Governor's Instructions as we have them before us in the White Paper, they would not add to the safeguards, but what they would do would be to give statutory effect to the obligation of the Governor to act in accordance with the advice of his Ministers.

Marquess of *Salisbury*.] All that will have to be very carefully looked into.

Sir *Akbar Hydari*.

5937. There is one question as to Proposal No. 70 (e), which corresponds to 80 (f), about the Governor-General's and the Governor's special responsibility in regard to protecting the rights of Indian States. If you will permit me, I will not take that up now, but when we take up the question of the responsibility of the Governor-General, because they are both worded in identical terms. Would that be convenient?—Yes, certainly.

5938. The only other question is this: If you will kindly turn to paragraph 102 about the procedure in the Legislature, and compare that provision with paragraph 52, you will observe that there is nothing corresponding to 52 (b) (1) in paragraph 102. Is that omission deliberate or is it for any reason? With regard to the procedure in the Federal Legislature, you have specially provided against any discussion or asking of questions on matters connected with an Indian State, save with the prior consent of the Governor-General. My only point is that such a provision has not been made in the corresponding paragraph regarding Provincial Legislation?—There is a reason, Sir *Akbar*, but I think I would prefer not to deal with it to-day, but to deal with it under the Federal point. I can then give you the reason why we have drawn a distinction.

Sir *Akbar Hydari*.] Thank you.

Sir *C. P. Ramaswami Aiyar*.

5939. Mr. Secretary of State, you are aware that under the Montagu-Chelmsford scheme there were certain differences that manifested themselves in the matter of joint consultation of the Governor with the Members of his Cabinet?—Yes.

5940. You are also aware that under that scheme in certain Provinces the convention or the practice developed of having somebody analogous to a Prime Minister, and other Provinces did not develop it?—Yes.

5941. Would you agree with me in saying that on the whole the scheme worked best and most in consonance with the ideas of the framers of the Constitution in those Provinces where a Prime Minister came into existence and the joint consultation was most fully exercised?—I think I would prefer not to generalise over the whole field of Indian administration; but I would say this, that we certainly contemplate under the White Paper proposals that the normal development would be a development with a Chief Minister and a Government working very closely in touch with the Governor in so far as the field of his special responsibilities is concerned.

5942. Would it be expedient, or would it not, to make it more explicit in the Instrument of Instructions that the ideal to be aimed at in so far as conditions and circumstances allow, is to bring into existence the practice of joint consultation and to form a Ministry with a Prime Minister?—I think we might certainly consider Sir *Akbar Hydari*'s suggestion; it is not in any way at variance with the general basis of the scheme.

5943. The only reason why I put it to you is this, that it would seem to be appropriate in the Instrument of Instructions and it would be a stimulus to Provinces and to Governors to pursue a line which on the whole is admitted to be not only safe, but advisable?—Yes, I think that is a suggestion we might well consider.

Mr. *Zafrulla Khan*.

5944. My Lord Chairman, I have some questions to put to Sir *Samuel Hoare* on the Provinces. Sir *Samuel Hoare* has said that the suggestion put forward



with regard to a nominated Minister responsible to the Legislature may be considered by Members of the Indian Delegation. I presume he meant that we would give our views during the discussion that followed, not that we should try to develop it by questions and answers?—That was my hope.

5945. Very well then; I shall ask you questions on that. With regard to the proposal in paragraph 90 (h) (2), at page 63, that the salaries of the Ministers shall be non-voteable, I have followed what the Secretary of State has stated already that it is not considered desirable to have frequent attempts made to oust a Minister through stopping his salary and that one of the methods of ousting him would be stopping the supply for his Department. May I put it to him that in voting upon the salary of the Minister, it would be only on the occasion of a discussion of the Budget, once in a year, and that would also be the period when the supply for his Department came up. What is the distinction sought to be drawn, that the Legislature should be at liberty to refuse supplies to the Minister, but must not refuse his salary, if they want to express their want of confidence in the Minister. Why should they not have the usual way of refusing to vote his salary?—We had in mind the lessons of experience, both in India and here. What impressed me was this, that whereas under our procedure the vote of the reduction of the salary of a Minister is in the nature of a formality, behind which is launched a want of confidence in the Government, in the case of, anyhow, several of the Provincial Assemblies in India, it has been frequently used as a means of withdrawing from the Minister, not a token sum of £5, or something of that kind, as is the case in the Parliament of Great Britain, but the whole of his salary or a large part of his salary. And it has also seemed to me to be true that a good many rather factious resolutions of this kind have been moved in Indian Assemblies. We were anxious to avoid a repetition of those kind of attacks, and to get the Procedure back to what it really is in principle here, if not in form, namely, that a vote for the reduction of a Minister's salary is really a vote of want of confidence in the Government. There is

nothing more behind the proposal than that.

Mr. Zafrulla Khan.] If the Secretary of State will excuse me, I am not so much upon the point of reduction of salaries. That is provided for in paragraph 68, at page 55, that the salary of a Minister will not be subject to variation during his term of office, and I agree that that may be so, and it would put an end to almost all that kind of resolution to which the Secretary of State has referred. What I want to understand is the distinction sought to be drawn that during the discussion of the annual Budget the White Paper leaves it open to the Chamber to refuse supplies to the Minister for his Department, but stops them from saying: "We do not want this Minister, therefore, we shall take out his salary from the Vote also." What is the distinction? The reduction of salary I can understand. Once a Minister is appointed, you either get rid of him by a vote of non-confidence or go on paying him the salary at which he was appointed; but if you permit that non-confidence may be expressed in a Minister when the Budget is being discussed by refusing supplies for him, why are you not prepared to admit that want of confidence in him may not be expressed by refusing his salary.

Lord Eustace Percy.] Is not the refusal of a salary a reduction of salary?

Mr. Zafrulla Khan.] It is, and once in a year.

Witness.] I was not contemplating that a vote of this kind would be restricted to a single occasion in the year, and the difference between us may be due to our different conception of Parliamentary procedure. I think I would like to consider Mr. Zafrulla Khan's point further, always with the assumption that I want to avoid these factious votes.

5946. There we are agreed. My point is rather this. I understand an item being non-votable in this sense. The Budget is put forward; you discuss all the items there; then items that are non-votable will not be submitted to the vote of the Legislature, they will not have the right of saying: "We shall not grant you this," and other items shall be submitted to their vote. That will happen only when other items of the

Budget are put forward. On certain other items there may be supplementary grants during the year ; but with regard to all Ministers' salaries, it would come up only on the Budget ?—I should like to look into this point further. So far as our procedure in the House of Commons is concerned, I think I am right in saying that there would be several opportunities of moving a resolution of that kind ; for instance, with our Appropriation Bills and Consolidated Fund Bills, and so on, but I think Mr. Zafrulla Khan and I are agreed as to what we want to avoid, and I will look into the point further as to what we want to obtain at the same time in the way of legitimate opportunities for criticism.

5947. Then on paragraph 69, at page 55, which is the next paragraph in order relating to the rules of business, during the preliminary discussion, I made a suggestion that the power there proposed to be given to the Governor should be limited by the proviso that these rules should be confined to rules which are designed to enable him to discharge his special responsibilities ; and I have a slight recollection, I will not be sure of it, that it was held that that was the idea. I do not know whether my recollection is correct ?—I think there were two objects intended by this proviso : First of all, that the Governor should see that business is not so arranged as to prejudice his special responsibilities, but, I think, certainly also, the Governor ought to have the chance of seeing that rules of business are not so arranged that he cannot follow generally what is happening in the Government. Under our proposals, at any rate in the earlier stages of the Constitutional changes, we are contemplating the Governor following very closely what is happening, and I would like to keep in mind that second need as well as the first.

5948. I would wish to put forward this suggestion for your consideration when you are coming to a final decision on these matters : that, so far as rules which are designed to enable the Governor to discharge his special responsibilities are concerned, he should have the power to make them at his discretion after consultation with the Ministers, and that the rest of the rules of business should be made by the Governor on the advice of

his Ministers ?—Yes. The trouble is that it is so difficult to say beforehand what is going to impinge upon the field of special responsibilities, and what is not going to impinge upon it.

5949. I am not asking you to say now ? —No. What I will certainly say is that I will take account of what Mr. Zafrulla Khan has said, and we will see how far it is possible to embody some kind of suggestions as that in rules of procedure that must obviously be uniform.

5950. With reference to paragraph 70, I have only one question to put with regard to Clause (a). Would not terrorism, or any kind of revolutionary movement, be regarded during even its initial stage as a grave menace to the peace and tranquillity of a Province, or of a particular area ?—Yes, I think that would be the case.

5951. And therefore this power would enable the Government to deal with the movements of that kind even during their very early stages ?—Yes.

5952. With reference to (f) of paragraph 70, may I ask the Secretary of State (it really comes under paragraph 106 at page 66, but it is referred to here also under the special powers ; they are related) would he be prepared to consider the suggestion that a list of excluded areas, or partially excluded areas, may be drawn up when the Constitution is about to be put into force as a sort of Appendix, and that, later on, it should be possible to modify that list wherever local variations may make it necessary, but that no further additions should be made to that list, so that no areas that have been included within the ambit of the Constitution should, at a later stage, be excluded from the ambit of the Constitution ?—My answer would be Yes. We have always contemplated a list of this kind, and we have contemplated some kind of procedure that has got to be specified for enabling areas to be taken out of the totally excluded list, and to enable partially excluded areas to be taken out of the partially excluded list. It is not the intention under this proviso to add to the list of excluded areas at all. Indeed, almost the only area that we contemplate as a totally excluded area is the hill tract area in Assam and the tribal tracts on the frontier. Apart from that, the areas will be partially excluded, and certainly there must be some

kind of machinery in due course for withdrawing those areas from one or other list when the time has come for their safe withdrawal.

5953. Now, if I may draw your attention to page 57, paragraph 74, provision is made for Second Chambers in certain provinces?—Yes.

5954. I am sure, Secretary of State, you are aware of the strength of opinion in Bengal in opposition to the proposal that a Second Chamber should be set up there, and, more particularly, that the Legislative Council there has passed a Resolution expressing their disapproval of such a proposal?—I do not think I would go quite so far as Mr. Zafrulla Khan suggests. The Resolution did not appear to me to express so strong a feeling as he suggests. I would accept the fact that there is a difference of opinion in Bengal on the subject, but I would not accept the fact that the opposition to the Second Chamber is as great as he implies.

5955. With reference to sub-paragraph (b) of that paragraph 74, the proposal is that where the Legislature consists of one Chamber provision should be made in the Constitution Act enabling the Provincial Legislature "to present an Address to His Majesty praying that the Legislature may be reconstituted with two Chambers, and that the composition of, and method of election to, the Upper Chamber may be determined by Order in Council." I suggest to him that he might consider a case like this: If the Resolution not only prayed for the establishment of a Second Chamber, but also laid down the composition and method of election, and, supposing the Resolution was made conditional upon that and dependent upon it?—I have the feeling (I do not want to express a final opinion upon this point) that with any Institutions as important as Second Chambers, Parliament here would wish to have a say of some kind and to be in a position to judge whether they thought they were fairly constituted or not.

5956. I do not want to carry the matter very far, but this kind of provision may have the effect of deterring a Lower Chamber from passing a Resolution which would permit of a Second Chamber and leave the composition and method

of election to be decided by the Secretary of State here?—I think we might consider Mr. Zafrulla Khan's point. Perhaps he will also consider the point I have just mentioned, namely, the interest of Parliament in the question. (Mr. Zafrulla Khan.) Certainly. With regard to paragraph 78 and others following, do I understand the Lord Chairman to say that we should not raise questions with regard to franchise? Would that observation apply to questions relating to the composition of the Legislatures, and so on, because, if so, I will not put any questions on it?

*Chairman.*] I think Mr. Zafrulla will understand the general purpose which I had in making the suggestion I made. He knows where he is leading, and I am quite prepared that he should judge whether a particular question should be put at this stage. If it is going to deal with the question of the franchise or technical matters of the ballot and things of that kind, I should hope he would reserve it.

*Mr. Zafrulla Khan.*

5957. I will reserve it until when I put questions on all those questions generally. I wish to draw attention to paragraph 85 on page 59?—Yes.

5958. One is familiar with a similar provision here. I should like to understand better than I do at present what it is exactly designed to meet, because I explained, or endeavoured to explain, during the course of the preliminary discussions that, as it is, the validity of elections in India, is rather overchallenged than otherwise. I do not think a matter of that kind is likely to slip through and this would raise a good many questions?—I am informed that No. 85 is to a great extent dependent on 84 (f); 84 (f) introduces a new provision, that, judging from experience here and elsewhere, we think ought to be included in the new Constitution in India, and if 84 (f) is included in the constitutional scheme, then I think some proviso like No. 85 is inevitable.

5959. Would it be possible in that case to confine it to 84 (f)?—We will look into that point. It is a drafting point, and I would like to look into it.

5960. There is only one suggestion I wish to make to the Secretary of State on paragraph 86 ; I do not want to go into details at present, but there is a feeling in India (it has been mentioned to me on several occasions) that the question of the privileges of the Chair and the members of the Legislature may be considered further than they have been considered in paragraph 86. This no doubt secures freedom of speech to the members, but the members, and more particularly the Chair, have expressed a desire that there ought to be some further privileges added, especially some powers vested in the Chair to control members and to maintain discipline, and so on. As I have said, I do not want to go into the details, but the Secretary of State might ask somebody who might be conversant with the details of that matter to look into it ?—We accept fully the importance of privileges of that kind. We have felt, however, that they were essentially privileges to be defined by the Federal Legislature itself. However, we will look further into the question and we will consult, say, the Lord Chancellor and the Speaker to see whether from their experience they can make any useful suggestions.

5961. Thank you very much. If power is left to the Federal Legislature to deal with the matter and perhaps in a smaller way to the Legislative Assemblies themselves, perhaps that would meet the case. With regard to the suggestion for Second Chambers for all Provinces I do not want to pursue that in detail, but I am sure the Secretary of State is aware that in some Provinces at least a Second Chamber, so far as the type of member was concerned, would be a mere duplication of the Lower Chamber. I have particularly in view the case of the Punjab ?—It was because of that, my Lord Chairman, that I was very careful to tell the Committee that there were these differences of opinion and that there were these different conditions to be considered Province by Province.

5962. One last question, Secretary of State ; that is a question to which reference has already been made. I merely wanted to be sure that the Constitution Act will leave room for that. I am not making any specific suggestions, but the

question is this, or rather the subject is : In the new Provincial Assemblies there will be no official bloc—official members ; the business of the Government will be conducted by the Government Bench ; naturally, there cannot be a very large number of Ministers, and in different Provinces Governors and those whom they might consult might consider it desirable to have, say, Assistant Ministers or Parliamentary Secretaries, and so on, of different types. There may not be uniformity in this matter. I do hope that the Constitution Act will not negative that kind of arrangement ?—We have not prescribed either the number of Ministers or the number of under-secretaries or, indeed, whether there should be under-secretaries, or whether there should not be under-secretaries. We feel that those are essentially questions that have to be decided by the Provinces themselves and in accordance with their own conditions.

5963. I merely wanted to know that the Act did not negative that kind of arrangement in the Provinces ?—No, it would not.

Sir *Tej Bahadur Sapru*.] There was power to appoint Council Secretaries and such Council Secretaries were appointed at one time in the Provinces.

*Dr. Shafa'at Ahmad Khan.*

5964. Sir Samuel Hoare, would you kindly look at paragraph 70 (b) page 55 ?—The paragraph relates to the safeguarding of the legitimate interests of minorities. I want to ask you whether His Majesty's Government have come to any definite conclusion regarding the recommendation of the First Round Table Conference concerning their representation in the public services. The Subcommittee made a recommendation in paragraph 4 (2) but the White Paper itself contains no reference at all to the matter, to which all minorities attach very great importance ?—I would prefer, if it is equally convenient, Dr. Shafa'at Hamad Khan, to ask that question, if he will put it to me, when we come to deal with the Service questions generally.

5965. Then would you kindly turn to page 37, Fundamental Rights, in the list of Fundamental Rights—I am referring

to the second sentence "His Majesty's Government see serious objections to giving statutory expression to any large range of declarations of this character, but they are satisfied that certain provisions of this kind, such, for instance, as the respect due to personal liberty and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc., can appropriately, and should, find a place in the Constitution Act". Now the Landlords' Deputation which waited upon this Committee laid great stress upon the necessity of protecting the rights of property. Have His Majesty's Government framed any formula for the purpose of protecting the rights of the landlords in the new Constitution?—I am afraid the more we have gone into this question of fundamental rights, the more difficult we have found it to be. It is so extraordinarily difficult to put in anything sufficiently explicit to make it susceptible of a legal decision, and without a legal decision the fundamental right is really only the expression of a pious opinion. As to the specific question that Dr. Shafa'at Ahmad Khan has asked me about the landlords, I think we must consider the whole of that question in connection, say, with the franchise, Second Chamber, and so on, and if we are to deal with it, it is much more effectively dealt with in that way than it is by putting in some phrase about the rights of property as a fundamental right in such a way as to make it almost impossible to get a decision from the Courts of Law upon it, or, if you are going to get a decision, to make it so confused an issue that litigation may go on for year after year about it. I have myself, at the former Round Table Conferences, expressed the view that one or two of these general rights might, perhaps, be expressed in the Royal Proclamation that would inaugurate the new Constitution, but over and above that, I do see great practical difficulties in having a long list of them. It is not a question of principle at all; it is a question of practicability.

5966. My point, Sir Samuel, was quite different. I think on that page the promise is distinctly held out that a clause to that effect will actually be embodied

in the Constitution itself, so far as rights of property are concerned, not dealing with other rights at all?—Yes; we have thought about it before. We have not got any clause drafted.

5967. But I hope a clause, as drafted, will be placed before the Committee for its view or discussion later on in due course?—We could certainly think about it, and, if Dr. Shafa'at Ahmad Khan would send us in any suggestions, we should welcome them.

5968. Our difficulty is that there is, I will not say either a legitimate or an unreasonable apprehension, but there is apprehension among certain landlords, not only in my own Province, but also in other Provinces, and they feel that this right must be safeguarded in explicit and precise language, in order that they may be protected in future; and, as they supply an element of stability in the Constitution, I feel that something ought to be done for a class of that character. I am very glad, therefore, to hear that the Secretary of State is willing to present a draft?—I would not dispute Dr. Shafa'at Ahmad Khan's contention at all. It is merely a question of how best legitimate interests can be safeguarded. No doubt it might be a good thing to have a clause somewhere saying that there can be no expropriation of property without compensation; but over and above that I think one wants to consider the question in greater detail from the angle as to whether a general proposition of that kind really will give the kind of safeguards that this or that interest may feel entitled to.

*Lord Eustace Percy.*

5969. I hope the Secretary of State, before doing that, will consider the process involved in the American Constitution?—I had that very much in mind when I spoke just now of the great delays in getting a decision upon points of this kind.

*Dr. Shafa'at Ahmad Khan.*

5970. I think His Majesty's Government do attach importance to the need for consulting the recognised constitutional procedure in the Legislature before a Second Chamber is established later

on?—Yes, and we have so done, anyhow in certain cases.

5971. Not in Bengal, if I may say so?—In Bengal there was a rather long history about the particular resolution, and I would rather not get into a controversy about it to-day. It did not seem to me to express a very clear view either one way or the other.

5972. It was passed by a majority?—I know; but there was some mystery about it, into which I would rather not go to-day.

5973. But I suppose His Majesty's Government will really consult the local Legislative Councils before they make a definite proposal for establishing a Second Chamber in any Province?—Yes; we have done that, I think, in every Province, except in Bombay, and we did not do it in Bombay because we were told that the feeling in Bombay was very definitely against the proposal, and there was no point in asking the Legislature to pass a resolution upon the subject.

*Sir Abdur Rahim.*

5974. I should like to know from the Secretary of State whether, under the scheme, it is contemplated that the Provincial Legislatures will not be competent to discuss any acts done by the Governors, or any measures taken by them in the exercise of their special responsibilities?—My answer would be that they would have no right. The responsibility, after all, is the responsibility of the Governor, and the Legislatures are not responsible for the action that he takes. Whether or not he would give them an opportunity of discussion is a question that must be decided at the time.

5975. But, according to the Constitutional proposals, it will depend entirely then upon the Governor in each case whether to allow any discussions or not, and would that be very practicable to decide?—To me it seems it was the only possible course. In any case it is the Governor who is responsible and not the Legislature.

5976. You practically mean that they will not be able to discuss any such acts of the Governor?—I think it is

very difficult to say in advance what will happen. The discretion will rest with the Governor.

*Mr. M. R. Jayaker.*

5977. There is no proposal in the White Paper prohibiting the Governor, if he so chooses, from submitting his act to the criticism of the Legislature?—None.

*Mr. M. R. Jayaker.*

5978. Then is it contemplated that the Governor, before taking any action, should consult the Legislature or the Minister?—I would draw a distinction between the Ministers and the Legislature. I am hoping that there would be a great deal of previous consultation between the Governor and the Ministers; and I am hoping that, as a result of that consultation, these powers will very seldom be exercised. The Governor would, I presume, call the attention to the Minister or the Government to some case that is likely to lead to an infringement of his special responsibilities, and I would have thought that if things were working well, the Ministers and the Government would welcome the opportunity of removing the cause of the trouble, and that the Governors therefore would never have to intervene; and the action taken, for example, discrimination against a minority, would be stopped in the first instance not by the Governor but by the Minister and by the Ministry itself.

5979. Then would the Secretary of State consider that it may not be practicable to insert in the Instrument of Instructions some clause which would give a lead to the Governor to that effect?—We are certainly contemplating that phrases should be inserted in the Instructions directing the Governor to work the two sides of the administration in the closest possible co-operation; and it is just that kind of phrase that I would have thought would have met Sir Abdur Rahim's point.

5980. By "the two sides of the Government", I think the Secretary of State means the special responsibilities and the responsibilities of the Ministers of the Governments?—Yes.

*Chairman.*] Forgive me, Sir Abdur. as he has an engagement. I shall propose to call him again when we meet I am under pledge to the Secretary of State to adjourn sharp at five o'clock, at ten-thirty on Thursday.

*(The Witnesses are directed to withdraw.)*

Ordered, That this Committee be adjourned to Thursday next—10-30 o'clock.

13th July 1933.

Present :

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.	Major Attlee.
Lord Chancellor.	Mr. Butler.
Marquess of Salisbury.	Major Cadogan.
Marquess of Zetland.	Sir Austen Chamberlain.
Marquess of Reading.	Mr. Cocks.
Earl of Derby.	Sir Reginald Craddock.
Earl Peel.	Mr. Davidson.
Viscount Burnham.	Mr. Isaac Foot.
Lord Ker (Marquess of Lothian).	Sir Samuel Hoare.
Lord Hardinge of Penshurst.	Mr. Morgan Jones.
Lord Irwin.	Sir Joseph Nall.
Lord Snell.	Lord Eustace Percy.
Lord Rankeillour.	Miss Pickford.
Lord Hutchison of Montrose.	Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.	Sir Manubhai N. Mehta.
Nawab Sir Liaqat Hayat-Khan.	Sir P. Pattani.
Sir Akbar Hydari.	Mr. Y. Thombare.
Sir Mirza M. Ismail.	

BRITISH INDIAN REPRESENTATIVES.

His Highness The Aga Khan.	Begum Shah Nawaz.
Sir C. P. Ramaswami Aiyar.	Sir A. P. Patro.
Dr. B. R. Ambedkar.	Sir Abdur Rahim.
Sir Hubert Carr.	Sir Tej Bahadur Sapru.
Mr. A. H. Ghuznavi.	Sir Phiroze Sethna.
Lt.-Col. Sir H. Gidney.	Dr. Shafa'at Ahmad Khan.
Sir Hari Singh Gour.	Sardar Buta Singh.
Mr. Rangaswami Iyenger.	Sir N. N. Sircar.
Mr. M. R. Jayaker.	Sir Purshotamdas Thakurdas.
Mr. N. M. Joshi.	Mr. Zafrulla Khan.

*Marquess of Salisbury.*] My Lord Chairman, I understand that the Appendix to Memorandum 29, being a Memorandum on Law and Order by Mr. T. Gavin Jones, was not printed in our Minutes of Evidence of the 4th of July. I think it would be desirable to print this, if you will agree?

*Chairman.* Certainly. It is as follows :—

APPENDIX TO MEMORANDUM 29 SUBMITTED BY THE EUROPEAN ASSOCIATION.

MEMORANDUM ON LAW AND ORDER.

BY T. GAVIN JONES.

*(Chairman of the United Provinces Branch of the European Association.)*

The problem is one which has to be decided upon with due consideration of the past history, traditions and temperament of the peoples of India, and of the method in which India is governed to-day.

When the secular Government weakens or abdicates, the instinct of the masses of rural India is not towards self-governing institutions, but a shifting of their loyalty towards that class or race whom they think will be strong enough to govern India justly, and protect them from aggression and misrule. The ideal of government of the people by the people for the people has no appeal in the hearts of the masses of rural India. The Hindu social system makes that impossible.

The methods of administration adopted by the British to govern rural India have been, and still are, similar in many respects to those utilised by the great Akbar and the other Moghul Emperors who followed him. It is to-day a benevolent autocracy, sustained by services very largely Indian, but stiffened in the senior executive appointments by recruits from England, who in the ultimate are responsible to the British Parliament, but who in the details of administration are unfettered and are judged by results. Since the introduction of the Montagu-Chelmsford Reforms, they have been greatly influenced by the criticism in the Legislatures, but have been unfettered in the details of their administration, and sustained by the support of the Governors of the Provinces.

The day-to-day administrators of British India are the District Magistrates who, with the Superintendents of Police and a mere handful of assistants control areas as large and populous as British counties. They are looked upon as the local representatives of the "Sirkar," that is, in the minds of the people, the

King Emperor. The principal duties of the District Magistrates, although by no means all their duties, are the collection of revenue and the maintenance of law and order. They are looked upon by the masses as the arbiter of the fate of the people under their control, within the laws laid down by the "Sirkar," are the recipients of the grievances of all the classes, and are personally acquainted with all the men of importance within their districts.

The District Magistrates have direct access to the Governors, who, on occasions, visit the districts and are in close touch with all that is going on, in the Provinces. Much of the information about the Provinces is obtained by the Governors by personal contact and D.O. correspondence, and the Inspector-General of Police and other heads of Departments are constantly in touch with the Governors.

If the responsibility for those administrative functions are transferred to Ministers responsible to the Legislatures, the real day-to-day government of rural India will rest with the Ministers and not the Governors, and the Ministers will be subject to the direct influence and intrigues of the Legislatures. It is true that the White Paper provides that the Ministers will act with the concurrence of the Governors, but the executive will not have direct access to the Governors, their representations will be dealt with by the Ministers. The personal touch of the Governors with the administration, so valuable in the day-to-day government of India to-day, will be gone. No safeguards either in the Act or in the instrument of instructions to the Governors can prevent this. Where the power rests, there will be the initiative and control. Dual control, by making the Governors also responsible, by influence without the real power to control, will be an entirely illusory safeguard.

Agrarian discontent, which often involves the prompt remission of revenue, communal disturbances, breaches of the law, and dacoities (that is pillage and murder in the villages by gangs of outlaws) have to be dealt with by the police,



under the control of the District Magistrates. Any failure to check such disturbance has to be dealt with immediately by the Governor, by the transfer and replacement of any officer incapable of dealing with the situation, or by the transfer of additional staff and police to the affected area. Frequently, disturbances occur in a district owing to weak government in an adjoining district, which has to receive the prompt attention of the Governor.

Personal touch of the administrators with the people is the basis of the peaceful government of India. Once that personal touch is lost, or the administration becomes lax in any way at all, demoralisation will spread rapidly. Let it be thought for one moment that the District Magistrate will not receive support in his administrative acts, then the demoralisation will become general and the police force, both in personnel and arms, will be inadequate to deal with the situation. The administration is upheld by prestige and personal touch, a delicate organisation which cannot, and must not, be tampered with.

To hand over this unique organisation to Ministers who will be subject to the vagaries of Legislature, is certain to lead to deterioration, which will undermine the foundations of the good government of India and will be the abandonment of the responsibilities of the British nation towards the rural millions of India.

It is proposed in the White Paper to hand over this administration, which I have endeavoured to describe, to Ministers individually responsible to a Legislature, who will hold office at the pleasure of that Legislature, and will be subject, not only to the criticism, but to the powerful intrigue of any group in the Legislature, concerning any act of administration. They may even be subject to the intrigue of their fellow Ministers, for there is no provision in the White Paper for collective responsibility, which gives so much stability to the British Cabinet.

Even if collective responsibility is adopted in principle, in times of stress, there will be intrigues in the Legislatures against the Cabinet, and pressure brought to bear on Ministers to placate the Legislatures by dealing un-

wisely with administrators, who may have done nothing more than carry out their duty, unpopular though it may be with certain sections of the people. In my experience in the Legislatures, both in the United Provinces Council and Central Assembly, I have seen that there is nothing which arouses excitement in the Legislature to a white heat as a communal disturbance, and the administrators come in for severe, and usually unreasoned, criticism from one community or the other.

If the administration is to remain strong, and free from interference from the Legislatures, there must be a fixed Executive selected by the Governor, preferably from the Legislatures, for the period of the life of the Legislatures responsible for the day to day administration to the Governor only, the Executive Head of the State. The Legislatures by the making of laws, criticism, and the voting of supplies, will control the policy of the administration and will have as much power as it is advisable for any Legislature to have in a country like India, composed of such heterogeneous peoples. It is as much power as the Legislatures have in most of the countries of Europe and America. The separation of the executive and Legislative functions is the only method by which India can progress in safety. The Cabinet system of Government is totally unsuited to Indian conditions.

If a fixed Executive is decided upon, the control of the Legislatures over the policy of the Executive can be enhanced by giving the Legislature power to remove a Minister, and impeach him by a vote of censure of two-thirds majority of both Houses, in which case, the Governor will select another Minister who has the confidence of the Legislature. The balance of power between the Legislature and the Governor can be discussed and settled by constitutional Lawyers; there are ample and varied examples in existing constitutions with a fixed Executive.

In the Centre the White Paper, very rightly, proposes to separate the Executive functions of the Reserve Bank, Railways and Ports by establishing executive Boards, in order to prevent political interference in the day to day administration. As it is the first duty of a

Government to maintain law and order, it is surely more important than anything else that the Executive functions of the administration of law and order should be separated from the Legislature.

This is no new theory, it has been adopted in various ways in America, Germany and France. In England it is a convention, in spite of the right of the Legislature to interfere. But the English Constitution is not a written Constitution, it has been evolved from centuries of experience. It is futile to imagine that the same conventions will be adopted in India where the conditions and temperament of the people are totally different, and where administrative methods are unique and totally different to anything in Europe. Are we going to graft a British unwritten Constitution on to India, in a rigid written form, with the slender hope that British conventions will be adopted and practised ?

It must be remembered that the Indian Legislatures do, and will, function quite differently from the British Parliament. There will be no two party, or even three party system, the Legislatures will be split into small groups largely on communal and racial lines, and it will be difficult for any group of Ministers to hold together a strong party for any length of time. Intrigues on personal lines are common to-day, and will be worse in the proposed new Constitution.

The fact of the matter is, that a purely democratic form of government on the British model is impracticable in India. Communal electorates are necessary, but are contrary to all democratic principles, and we are apparently to have communal representation in the Cabinet also.

In considering the adoption of the British methods of government in the provinces of India, as suggested in the White Paper, the temperament of the peoples of India must not be overlooked. The parliamentary method of Government on the British model have not been adopted in any country outside Great Britain and the Dominions. In many countries parliamentary institutions are being abandoned.

Some countries cannot of themselves evolve any stable form of government China is a case in point, not because the

Chinaman is in way inferior individually, but because they are not homogeneous, and since the destruction of the Imperial autocratic power, have been unable to unite. It takes centuries to evolve homogeneity. It took centuries to evolve a united nation in Great Britain, Germany and France. India is far from being homogeneous, and therefore the British Raj, or some other strong outside power, must remain to keep India united. The British Raj will not be able to remain if the foundation of the good administration of the Rural masses is undermined and destroyed.

The divisions of the peoples of India are not only numerous but profound. They have no natural love of political liberty, they like and expect to be ruled by a class. They have no natural respect for Law and Order which cannot be maintained if the ruling class are not strong enough to enforce it, as was evident during the civil disobedience movement, to which there was no effective opposition among the people. Corruption, if not discovered and punished by the ruling class, is an offence easily condoned. The people are emotional and easily led astray.

Lord Balfour, in his introduction to the new edition of Bagehot's English Constitution, says :

"Constitutions are easily copied, temperaments are not ; and if it should happen that the borrowed constitution and the native temperament fail to correspond, the misfit may have serious results. It matters little what other gifts a people may possess, if they are wanting in those which from this point of view are most important. If, for example, they have no capacity for grading their loyalties as well as for being moved by them ; if they have no natural inclination to liberty, and no natural respect for law, if they lack good humour and tolerate foul play ; if they know not how to compromise and when ; if they have not that distrust of extreme conclusions, which is sometimes mis-described as want of logic ; if corruption does not repel them ; and if their divisions tend to be too profound, the successful working of British institutions may be difficult or impossible."

I have endeavoured to describe the traditions and the temperament of the peoples of India, and the existing government of India, with no object of retarding political advance, or with the object of continuing the government of India from Whitehall, but with the object of giving India a form of government which will ensure stability and continuity of administration, and which should enlist the co-operation of politically minded India in the future government of India. The policy of the internal government of India should be controlled by India, so long as there is no attempt at a breakaway from the British Empire, and the power of Great Britain remains to keep India united, to uphold the rights of the existing Indian States, to prevent racial discrimination, and to ensure that the rural millions are well and justly governed. This, in my opinion, is in the best interests of India herself, and can only be attained by maintaining a direct chain of responsibility for the administrative government from the District Magistrates to the Viceroy, the representative of the King Emperor.

The administrators can be Indian, but they must not be subject to interference in their administrative functions from the Legislatures. After all, what politically minded India really wants, is not so much democratic Government as government of India by Indians. This can be given full scope of development through the Legislatures, on the legislative side of government. The Executive side of government must remain in the ultimate the responsibility of the British Nation until such time as India becomes homogeneous and really a united nation.

The national spirit in India is only beginning to develop. India is not yet a Nation.

The Army and the police are loyal to the Sirkar, not to any institution. Undermine that loyalty, and the government of India will collapse. An Act of Parliament may lay the foundations of destroying that loyalty, but no Act of Parliament can suddenly transfer that loyalty to an institution.

Rural India requires personal government. The District Magistrates have on many occasions had to call upon the Army for support, and since the Army is to be responsible to the Viceroy, it is only logical that the Magistrates and the police should be responsible for their actions in the maintenance of law and order to the same ultimate authority.

This proposal does not mean going back, but going forward on lines adapted to the traditions and temperament of the peoples of India.

I am in agreement that the Act should provide for the transfer of Responsibility in the Central Government because the Executive functions of the Army and Foreign affairs are to be reserved for the Viceroy, but Federation should not be forced through until the Provincial States are established and working smoothly. It is a platitude to say that the foundations must be built before the roof can be put on. The Constituent States will be the foundation of the Federal Government. The proposal that I make regarding law and order I believe is more likely to ensure the smooth working of the Constituent States than any other form of government, and thereby the attainment of Federation accelerated.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., K.C.S.I., and Sir FINDLATER STEWART, K.C.B., K.C.S.I., C.S.I., are further examined

Sir *Abdur Rahim*.

5981. The Secretary of State, in answer to a question of mine, assured us that he was considering whether you should not put in some phrases requiring close co-operation between the Governor and the Ministers. Then another question I should like to ask him in this connection is this: Whether it is not

equally necessary, if it can be provided, that there should be close co-operation between the Governor and the Legislature also. I find it is provided that the Governor will, whenever he likes, address the Legislature. The difficulty I am feeling is that if there is disagreement, as may sometimes happen, between the Governor and the Ministers regarding the exercise of any special responsibility of

the Governor, the Minister has got either to agree with the Governor or to resign. Is not that the position?—(Sir Samuel Hoare.) I did not quite follow Sir Abdur Rahim's question, I am afraid.

5982. I mean, if any question arises as to the necessity of exercising his special responsibility by the Governor, and if the Ministry or the Minister concerned is unable to accept the view, then either the Minister must get the support of the Legislature as regards his action or must resign. Would that not be the position?—No, I do not think those would be the only two alternatives. I think there is the third possibility of the Ministry and the Legislature accepting the Governor's decision, and the Ministry continuing in office. I think it would depend very much upon what importance the Ministry attached to the particular case.

5983. We can well suppose that the question of the exercise of any of the special responsibilities will only arise in important matters. The difficulty which I am experiencing is that if the Ministers have to carry the Legislature with them as regards that matter they will have to consult the Legislature. Is that not so?—Again I am not quite clear as to the exact case that Sir Abdur Rahim is contemplating. If he is contemplating a case in which the Minister desires to obtain the support of the Legislature, then it seems to me that there is no need for the intervention of the Governor. It is a question between the Ministry and the Legislature, and I do not see upon what ground the Governor could, or should, intervene.

5984. That is the difficulty, really, that I am feeling, that if the Ministry cannot get the support of the Legislature for the action proposed by the Governor, then, in that case, the Minister will be forced to resign?—Yes, I think in certain cases that might happen.

5985. May I draw your attention, Sir Samuel, to proposal 67 of the White Paper, page 55? I take it that it is contemplated that the person who commands the largest following in the Legislature must have that following in both the Houses combined?—It is very difficult to make a precise definition, but quite obviously we contemplate the Member of one or the other Chambers who

has got the largest body of Parliamentary support.

5986. Both Houses combined, I take it?—Certainly; that goes without saying. It would not be much good, assuming that a man had the greatest Parliamentary support when he had a certain amount of support in one Chamber and had very little in the other.

5987. Yes, that is exactly what I wanted to clear up. Then who will have the distribution of the Portfolios? Is it the person with the largest following, or the Governor?—In theory, the Governor; but in a case of this kind we wish to leave the situation elastic. I think as Parliamentary practice develops more and more, I would imagine, it will develop on British lines, but for the time being, we wish to leave the position as elastic as possible.

5988. That is to say, you do not want to specify the authority who will distribute the Portfolios at present?—Constitutionally, the appointments originate in the Governor, but exactly how far the Minister who has the greatest following in the Assemblies will intervene in the position must be a matter of development, and must depend upon the situation in the particular Province.

5989. Then, as regards Proposal 70, that is the paragraph relating to special responsibility, I wish to draw your particular attention to heads (a), (b), (c) and (d). There the question is not so much of information as to what is happening, but a question of opinion whether the occasion has arisen when any of these powers has to be exercised?—Yes. It is more than a case of opinion in (c), I think. There the rights of the Services are, to a great extent, explicit, if you accept the general definition of the rights of the Services upon which the proposals of the White Paper are based.

5990. May I clear this up? Public Services there include all Services to which appointments are made by the Secretary of State or the Governor-General?—No; (c) goes further than that; it is all the Public Services.

5991. The procedure then would be, I suppose, that the matter would go, in the first place, to the Public Services

Commission and then to the Governor. Is that the idea?—It is very difficult to make a general answer to a question of that kind. I can quite imagine that certain cases would go to the Public Services Commission, but I would not like to say that all the cases would go to the Public Services Commission. I can also imagine that in quite a large number of cases there would not be any need for the cases to go beyond consultation between the Governor and his Ministers. I am relying upon these provisions being worked in an atmosphere of common sense, and I believe myself that in many cases all that will be necessary will be for the Governor to call the attention of his Ministry, or of one of his Ministers, to a particular infringement, or to what he thinks is going to be an infringement, and I believe that action will then be taken that will render it unnecessary for the Governor to intervene on his own initiative over the heads of his Ministers or his Ministry.

5992. Then do I understand that you do not propose to define the spheres of the Public Services Commissions or the Governors or the Ministers in this respect?—We have set out the rights in one of the Appendices.

5993. Appendix VII, I think, page 120?—Yes.

5994. That is relating to persons appointed by the Secretary of State in Council. Then page 121, Part II, relates to persons appointed by other authorities. I mean, there is no definition of the spheres of jurisdiction there, is there?—I am quite ready to give general answers about the relations of the Provincial Governor to the Services, but I would, myself, prefer to deal with the details connected with the Services in a more explicit discussion. I am quite ready one day next week to take up the whole chapter of the Services, and to deal in detail with the Appendices and with the conditions generally. I would suggest that it would be better to do it then rather than to interpolate a rather technical discussion of this kind into a field of discussion that is really of a wider and more Constitutional character.

*Chairman.*] I feel sure that the Committee and the Delegates will accept that suggestion.

*Sir Abdur Rahim.*

5995. Yes; I will not press you further upon that. As regards the Second Chamber, I wish to clear up one thing. I think the Secretary of State has already told us that there may be difficulty in obtaining the proper personnel for both the Houses in some Provinces—sufficient personnel. I think you told us that on the last occasion?—Yes.

*Sir Austen Chamberlain.*

5996. May I just get the Secretary of State's answer quite clear in my mind? I understood at the time the original answer was given, it applied to the Provinces in which the White Paper did not propose a Second Chamber, but he had no doubt about the power to get the right men in those Provinces in which a Second Chamber is proposed?—Yes, that is my view.

*Sir Joseph Nall.*

5997. Does that apply to the Presidency of Bombay?—In the case of Bombay, there are other considerations to take into account. I think, myself, that the argument that I used about the personnel and the difficulty of obtaining sufficient personnel at the outset for two Chambers, would not apply to Bombay.

*Sir Abdur Rahim.*

5998. May I suggest that there may be other Provinces or Presidencies like that; take, for instance, the Punjab. I am not suggesting that there should be, as a matter of fact. My own view is that it would not be advisable to have a Second Chamber anywhere, but what I am suggesting is, is there any really good ground for differentiating between one Province and another and to say that there is more material in one Province than in another?—I did not base my argument principally upon the question of personnel at all. In answer to Sir Austen Chamberlain, I was giving him a number of reasons that have got to be taken into account when we consider the question of Second Chambers, and I think everyone in this Room, most of all the Indian Delegates, can judge for themselves as to the personnel question. My own personal view is that in certain of the Provinces, at any rate in

the early chapters of the Constitutional changes, it might be a cause of difficulty, and it certainly would be a cause of expense to provide the personnel for two Chambers. I do not put the argument higher than that.

5999. I think one question was put by Dr. Shafa'at Ahmad Khan in this connection, whether it is intended by the Secretary of State to obtain opinion as regards the advisability of instituting a Second Chamber, for instance, in Bengal, where there has been a majority, of at any rate, one, I believe it was, against the institution of a Second Chamber?—I have done my best to collect opinion from all the Provinces, whether it be through the channel of Resolutions in the Council, or whether it be through other channels. My own view about Bengal is that there are special conditions there that make it peculiarly necessary to consider people's anxieties and to give them what reassurance we can with a view to remove their anxieties, and, that being so, it seemed to me, taking one consideration into account with another, that it was wiser to have a Second Chamber in Bengal.

6000. I do not want to press the Secretary of State, unless he himself desires to elaborate that any further regarding Bengal. I leave it entirely to him?—I do not think there is any need for me to elaborate it further. I think the kind of anxieties that are felt with reference to, at any rate, the immediate future in Bengal, are probably in the minds of every Member of the Committee and every Indian Delegate.

*Dr. B. R. Ambedkar.*

6001. Would you say the same thing with regard to the United Provinces and Bihar?—I would not say the anxieties were the same. Sir Malcolm Hailey reminds me that in the case of the United Provinces, the Council passed a Resolution in favour of a Second Chamber.

*Dr. Shafa'at Ahmad Khan.*

6002. Yes?—They also passed a Resolution in favour of a Second Chamber by a very big majority, as far as I can remember, in Bihar and Orissa. Further than that, if my memory is correct, I think the Provincial Committees that sat

with the Simon Commission recommended Second Chambers in both those cases.

*Sir Abdur Rahim.*

6003. May I draw the attention of the Secretary of State to proposal 75, regarding the Governor's power to dissolve a Provincial Legislature at his discretion: May I take it that before he takes any such step, he will consult the Ministers?—Here again we feel we must leave the position elastic. We believe that in actual practice it will work very much upon the lines of Constitutional practice here, but we do feel; in view of the fact that the Governor has this field of special responsibilities, that we must leave a certain amount of elasticity.

6004. Now, Proposal 88, page 60: These are the special powers of the Governor, that is to say withholding assent from any Bill, or reserving a Bill for consideration of the Governor-General, and remitting a Bill to the Legislature with a message requesting their consideration. Is that general or is it only in exercise of his special responsibility?—Here again, the answer I gave to Sir Abdur Rahim's previous question is equally applicable. We believe that in practice these powers will tend to develop upon the lines upon which they have developed here, but we feel that we must leave certain elasticity for the same reason that I gave in answer to the question that he just asked me.

6005. As it stands, it is not confined to the question of special responsibility?—No.

6006. I want to know from the Secretary of State whether he has compared, as regards Proposal 103, regarding Ordinances—whether the terms of the proposal are not really wider than Section 72 of the Government of India Act. I mean, apart from the question that under that section it is only the Governor-General who can pass Ordinances and not any Provincial Governor, I think at a previous stage the Secretary of State gave us the reason why he has conferred these powers on the Governors of the Provinces also, but I want to know from him whether he has considered that the circumstances in which the Governor can issue Ordinances, cover really a wider field than even the present Government of

India Act ?—It is difficult to make a general answer to a question of that kind, for this reason : Under the Government of India Act there is no such field as the field of special responsibilities, and the existence of that field must make a difference in the way in which you express the power of the Governors to issue ordinances.

6007. I think under the Act, if I remember correctly, it is in cases of emergency ?—Yes. As soon as it is admitted that there must be a field of special responsibility then you must obviously give the Governor the power for carrying out those responsibilities, otherwise the list of special responsibilities is simply a paper list with no sanction behind it. We have felt as a result of that fact our previous discussions in the Round Table Conferences that something in the nature of an ordinance-making power and a legislation-making power was quite essential if these safeguards were to be more than paper safeguards.

*Sir Hari Singh Gour.*

6008. Speaking on the broad Constitutional issue relating to the Provinces, will the Secretary of State be pleased to state that his proposals do amount to the grant of Provincial autonomy in all the Provinces ?—Just repeat that question, Sir Hari Singh Gour. I am not quite sure that I followed it.

6009. Taking up first the broad Constitutional issue, do I understand the Secretary of State to say that there would be Provincial autonomy in all the Provinces under the scheme of the White Paper ?—Yes.

6010. Is it, or is not a fact, that the ultimate control in the Provinces rests in the Governor ?—Constitutionally, yes, but that does not mean that in actual practice there is not a great field of responsibility for his Ministry.

6011. I started by saying that I was at the present moment concerned with the Constitutional issue and not with how it will work in practice, to which I shall come presently ?—I do not quite see the implication that Sir Hari Singh Gour wishes to draw from my answer. It would be equally true to say that constitutionally ultimate power rests with the Crown in England.

6012. So far as Provincial autonomy is concerned the finality in the matter of deciding questions of policy and action in the Provinces would finally rest with the Governor of the Province ?—No, I would not at all give a general affirmative to a question of that kind. We are contemplating that in the field of responsibility the Provincial Government will be responsible.

6013. Would the Secretary of State be pleased to state with reference to the paragraphs we have under discussion, namely, paragraphs 61 to 109, any matter in which the decision of the Minister would be final ?—All the matters that are not trenching upon the field of special responsibility—a very wide field.

6014. Would the Minister in those cases be able to give a final decision without any control or without any power of revision by the Governor ?—Certainly, if they did not trench upon the field of the special responsibilities.

6015. Of which the Governor would be the sole judge ?—Yes.

6016. And the Governor in this matter would be guided by and would be subject to the directions, supervision and control of the Governor-General ?—Yes, constitutionally, that is the state of affairs.

*Marquess of Salisbury.*

6017. Might I interpose, not by way of criticism : The Secretary of State very often uses the word "Constitutionally." He does not mean that to be as distinguished from actually and practically ?—No, not at all, but I do want to make the distinction when one of the Committee, or the Delegates, is making an argument based very much upon constitutional theory, that there is often a difference between the constitutional theory and the constitutional practice.

*( Sir Hari Singh Gour.*

6018. I am coming to the constitutional practice in a moment. I started first by saying, Let us go into the constitutional theory. We shall find how it is modified by constitutional practice, and, I venture to submit, so far as the White Paper is concerned, there will be no dissonance between constitutional theory and constitutional practice, and I hope

to show you that. Resuming my question : As the Governor is subject to the supervision, direction and control of the Governor-General, the Governor-General is subject likewise to the direction, supervision and control of the Secretary of State ?—Yes, certainly.

6019. And on top there is the shadowy control by Parliament ?—I do not know that I would take responsibility for the epithet. In fact, I do not think I should.

6020. So far therefore as the Provincial autonomy is concerned, speaking on the subject of constitutional theory apart from practice, the ultimate power does rest, and continues to rest, with Parliament, the Secretary of State, the Governor-General and the Governor ?—In the field of special responsibilities.

6021. But have I not started by saying that there is no field so far as these paragraphs are concerned where the Governor's power ends, and where the Minister's responsibility is final and conclusive ?—Sir Hari Singh Gour can have his view ; I have mine. I regard the field of special responsibilities as a definite field.

6022. Who is to be the judge of what is in the field of special responsibility ?—It is not any good my going on answering the same question time after time. I have already said the ultimate responsibility is with the Governor and the Governor-General.

6023. And they are the sole judges ?—I have already answered it twice.

6024. Taking the question from theory to practice, how would the practice differ from the theory in the actual working of the Provincial Constitution ?—Would Sir Hari Singh Gour make his question a bit more precise ?

6025. My question is : What is the difference in the White Paper that divides constitutional theory from constitutional practice ?—I would suggest that we are really getting into a metaphysical discussion. If Sir Hari Singh Gour would make his questions precise, I would give precise answers to them.

6026. The question I asked was that in practice the Governor would be guided by the constitutional theory which is really his sheet anchor, and, in guiding the proceedings of the Provincial

Government, he will be guided by what are his inherent rights of ultimate control in the Provinces ?—I am afraid, my Lord Chairman, that Sir Hari Singh Gour and I take very divergent views of the way in which these proposals are going to work. He assumes that the theory will be applied in a strictly legal and inelastic manner ; that is to say, that on the one hand there will be a Governor pushing to the full and to the last letter of the contract every one of these special responsibilities ; working in a watertight compartment apart from his Ministry. I do not assume that state of affairs at all. I assume the Governor and his Ministry normally working in close relations with each other and in friendly relations with each other, and I do not believe this extreme kind of dyarchy is actually going to arise in practice.

6027. As regards the large question of services, apart from the technical questions which we will reserve for future consideration, if there is to be a Provincial autonomy does not it follow that the services should equally be provincialised ?—As practical men, we have to take into account the conditions as they are. One of the basic conditions of our proposals (we believe it is a proposal as much in the interests of India as in the interests of the services themselves) is that the contracts with the services should be kept and that India should have the great advantage of a highly efficient Civil Service, particularly in the early and difficult years of its development.

Sir Hari Singh Gour.] Is the Secretary of State aware of what the Lee Commission decided on the question of the transferred field ?

Mr. Zafrulla Khan.] Had not we better discuss that when the services are under discussion ?

Sir Hari Singh Gour.] I am not dealing with the details of the question ; I am only dealing with the broad question.

Mr. Zafrulla Khan.] Why not deal with the broad question also when the services are under discussion ?

Sir Hari Singh Gour.

6028. I am quite prepared to do that. Is the Secretary of State prepared that we should take up this question when



we are dealing with the services ?—It is whatever the Committee likes. I believe that would be the more convenient course.

6029. I should like to know something about the powers and functions of the Governor's secretary. What will be his position *vis-a-vis* the Ministry and the Legislature ?—He will not have any constitutional position in face of the Ministry and Assembly at all. He will be the personal representative of the Governor.

6030. He will be something like a Deputy Governor, do I understand it ?—No.

6031. Will he be the mouthpiece of the Governor ?—I should think very often.

*Mr. M. R. Jayakar.*

6032. Is there any proposal in the White Paper about the Governor's secretary ?—No ; the only proposal is that the Governor is to have what staff he requires.

*Sir Hari Singh Gour.*

6033. Referring to the question of Law and Order in the Provinces, it has been suggested that two proposals have been made, and one of them appears to have been acceded to subject to further consideration by the Secretary of State, and the other was replied to by Sir Malcolm Hailey, that it is proposed to separate the rules into the Governor's rules and the other rules. Taking the first question about the reservation of the Special Branch and taking it out of the control of the Ministry, what is the object that the Secretary of State has in view ? Does he think that the reservation of the Special Branch by the Governor would be conducive to the improvement of the present state of Law and Order in the Provinces ?—It is impossible to give a general answer to a question of that kind. What was in my mind was that in the event of a grave emergency, or in the event of conditions that made it clear to the Governor that a particular course of action of this kind was necessary, the Governor should have the necessary powers to take that action, and we have given him implicit powers to that effect under the provisions of the White Paper.

6034. Yes, thank you. But is it necessary to go beyond the terms of the White Paper in arming the Governor with any special control over the Special Branch of the Police ?—That is very much a question for subsequent discussion. We have under the proposals of the White Paper gone upon the general line of giving general powers of this kind, to be applied where they are necessary. The other alternative that has been suggested to us in a good deal of the evidence and in the course of our discussions is to make those powers more explicit. That seems to me to be essentially a question for the Committee to consider.

6035. I see there is an underlying current of thought in several questions addressed to the Secretary of State on the last occasion to the effect that unless some special provision is made in the Constitution Act for the safeguarding of Law and Order, it is likely to be endangered if under the Ministry. Is that the view that the Secretary of State takes ?—I could not possibly base an answer upon the impression that certain questions have made upon a particular member of the Committee or upon a particular Indian Delegate. I could not give an answer unless I were asked a precise question.

*Sir Hari Singh Gour.*] The precise question I wish to ask is this : In answer to a question that was put to the Secretary of State the other day—it was a question regarding the Special Branch of the Police ; I think it is a question—

*Chairman.*] Could you put your point specifically without regard to a question that has already been asked ?

*Sir Hari Singh Gour.*

6036. Yes, my Lord. The question I wish to put is this : What does the Secretary of State think of the preservation of Law and Order under the present system of Government since, we will say, 1905 down to date ? Does he, generally speaking, think that the present Government have been able to bring it under control in the Provinces where there have been periodic recrudescences of terrorist crimes and general menace to the peace and liberty of the people ?—I think they have done wonderfully well in view of the difficulties.

6037. And does he not think that the Minister of the future, when armed with that responsibility, will do even better than the present Government?—I always go on hoping that there will be an improvement everywhere in the world.

6038. Then why not trust the Minister to deal with the question of Law and Order?—That was the basis of my argument the day before yesterday, when I said that we had made proposals in the White Paper for the transfer of Law and Order.

6039. But why reserve anything at all which would be useful to him in preserving Law and Order—any branch of the Police which may be necessary for the purpose?—Because we believe there may be certain circumstances that may necessitate exceptional action.

6040. Dealing with the question of bicameral legislation, the question of bicameral legislation in the Provinces has been the subject of inquiry from 1928 when the Simon Commission went into that question?—I am quite prepared to accept that statement.

6041. And that the Simon Commission made no recommendation for the establishment of bicameral legislation in the Provinces?—If my memory is correct, there were two views about Second Chambers then, just as there are two views about Second Chambers now.

6042. What I am meaning is, that the Simon Commission made no recommendation?—Yes, it is so; they made no definite recommendation. Is that so?

Viscount *Burnham*.] They said they could not come to any unanimous decision.

*Sir Hari Singh Gour.*

6043. Therefore, I say they made no recommendation. That is the point I am making?—That would be a correct inference to draw, no doubt.

Viscount *Burnham*.] They could have made a recommendation, but it would not have been unanimous.

*Sir Hari Singh Gour*.] But they made no recommendation; that is the point I am making.

*Sir Austen Chamberlain*.] That point has been clear for some time and was stated the other day.

*Sir Hari Singh Gour.*

6044. What has happened since the Report of the Simon Commission to alter the view which now finds its place in the White Paper?—What has happened is that we have never stopped having Inquiries about Constitutional questions for any day or any month since the Statutory Commission issued its Report.

6045. Is not the Secretary of State aware that in places where the Second Chambers are proposed to be established, the anxieties felt are mainly concerned with the preservation of what is known as "vested interests"?—No, I would not accept that conclusion at all.

6046. Would not the establishment of a Second Chamber bring in the principle that Members who represent the few will control the policy of those who represent the many?—I do not think so.

*Marquess of Lothian.*

6047. Secretary of State, may I just ask one question to clear that up. As I understand, the Electorate for the Second Chamber, under the White Paper proposals, is the same as for the Lower House. If you look at the Appendix on page 92 of the White Paper: "17 directly elected from constituencies for which only Muslim voters will be qualified. 34 directly elected from general-constituencies for which all qualified voters other than Muslims will be entitled to vote". Is that not correct?—I do not think I could say that that was exactly accurate. I have always contemplated that the elected members of the Second Chambers would be elected upon a higher franchise.

*Marquess of Lothian*.] The White Paper does not specify that.

*Major Attlee.*

6048. May I point out that Appendix V on Page 113 says it is intended that the franchise shall be based on high property qualifications?—It would, however, be fair to add that this question was considered at the First Round Table Conference at some length, and Second Chambers were proposed for three Provinces, and there was a great measure of support for those proposals at the First Round Table Conference. I did not say it unanimous; I said there was a

large body of support behind the proposals.

*Sir Hari Singh Gour.*

6049. In any case, under the scheme of the White Paper, the Second Chamber would contain an element of nominated members ?—Yes.

6050. And that again was condemned by the Simon Commission, that the nominated *bloc*, for reasons given by them, should go ?—I do not see how that can be so. We have just heard that the Simon Commission made no recommendations for Second Chambers at all.

6051. I was dealing with the general question of keeping no official *bloc* in the Legislature ?—There is no intention to keep an official *bloc* in either Chamber.

6052. I thought that in Bengal 10 members were to be nominated by the Governor at his discretion ?—It does not in the least follow that those members would be in an official *bloc*. I do not contemplate that they would be in an official *bloc* at all.

Mr. Butler.] There is a specific provision which says that serving officials would not be eligible for nomination.

*Sir Hari Singh Gour.*

6053. They will be nominated members ?—It does not follow that nominated members form an official *bloc*. If it did, every English gentleman who was created a Peer, would immediately become a member of an official *bloc*. That is not the case.

*Sir Tej Bahadur Sapru.*

6054. The Government has liberty to nominate a non-official ?—Certainly.

*Sir Hari Singh Gour.*

6055. I understand that the Secretary of State is now dealing with the Constitutional practice, apart from the practice as we find it now occurring in the Legislative Assembly elsewhere ?—No.

6056. Is the Secretary of State aware that official whips are issued to nominated members in the Legislative Assembly ?—I do not know whether that is so, or not. I do not see its application to the particular question we are considering, namely, the constitution of

the Second Chambers in three or more Provinces in future.

*Sir Phiroze Sethna.*

6057. Mr. Secretary of State, you told us the other day that you would endeavour to submit a draft of the Instrument of Instructions to the Committee. May we know if it is possible to have that draft ready in time for the Indian Delegates as well to see the same and express their opinion upon it ?—The difficulty with anything in the nature of a final draft is due to the fact that our discussions are not ended, and it may well be that the Committee will desire things to be inserted in the Instructions or omitted from the Instructions, about which I do not know now. We have put in the White Paper our suggestions for the Instructions ; if we can amplify them in any way, as a result of these discussions, I will see if we can do so, but we cannot possibly put in a draft of the final opinions of the Committee until the Committee has ended its deliberations.

6058. That means that we shall not know the contents of it ; we shall not be able to give our opinion upon it. Was any Instrument of Instructions in the past placed before Parliament ?—No.

6059. The White Paper states that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitutional Act. You say it will be placed before the two Houses ?—Yes.

6060. Which will give it the elaborateness of a Parliamentary statute, yet in answer to Lord Eustace Percy, you said the other day that it will have no legal validity ?—No, I do not think I said that, did I ? I should like you to refer me to the question, and the answer I gave, because I do not remember what I said.

6061. Never mind. May we take it then that the Instrument of Instructions will have legal validity ?—It has sanction, to this extent, that nothing can be inserted in the Instructions that is not within the framework of the Act. The Instructions cannot go outside the Act. The Act, therefore, has full legal validity, and the Instructions must be within that framework.

6062. Then there are more than recommendatory?—They are the interpretation that the Government and Parliament place upon the provisions in the Act.

Marquess of *Salisbury*.

6063. But they are more than recommendatory; they are mandatory, sometimes?—They are mandatory; but I understood Sir Phiroze Sethna's question to deal with the definitely legal aspect, as to whether they were statutory, or not. They are certainly mandatory.

Mr. *Zafrulla Khan*.] If I might intervene for one moment, I think, so far as I can follow Lord Eustace Percy's questions on this, they had this trend: Supposing the Instrument of Instructions gives certain directions to the Governor, so far as the Governor is concerned, no doubt they are mandatory in the sense that he is charged by His Majesty to do certain things and to take care that certain things are done in a certain manner, but Lord Eustace Percy's question was whether in the event of the Governor failing to carry out his, a suit could be based upon the Instrument of Instructions, and then the aspect would be this: Those are directions from His Majesty to the Governor. They are not a Statute in the sense that they provide rights and liabilities for the subject on which he could base a suit. If I might venture to put forward an opinion with the greatest deference, I think it would be this: The Governor would be bound to carry them out, and his responsibility with regard to them would be to His Majesty or to the Secretary of State, and so on; but I do not think with regard to the civil rights and liabilities of the subject, either between subject and subject or between subject and the State, the Courts could take cognisance of it.

Marquess of *Salisbury*.

6064. May I put it in this way: Could the subject plead the Instructions in a Court of Law?—My answer would be, no.

Sir *Phiroze Sethna*.

6065. Then there is no legal validity?—There is the legal validity of the Act upon which the Instructions are based.

Marquess of *Reading*.

6066. Secretary of State, you would agree, would you not, that the Letter of Instructions, apart altogether from an Act of Parliament—that is the Letter of Instructions issued by the King to the Governor-General or the Governor is in that sense, that is, in the proper sense of the term, mandatory?—Certainly.

6067. He must obey it; it is not a mere recommendation?—Certainly.

6068. It is a definite instruction, and it is called a Letter of Instructions, for that reason. If I followed it correctly, just to try to clear the strict legal point, your observation is that the Letter of Instructions will always be the Letter from His Majesty?—Yes.

6069. And will, consequently, always remain in the same category as formal Instructions by His Majesty, but certain things will be prescribed by Act of Parliament which will be the view of Parliament as to what should be included in the Letter of Instructions. That is right, is it not?—Yes, I think it is substantially so.

6070. And that, of course, must depend—I mean, what is to be put in the Letter of Instructions can never transcend in that sphere what is already in the Act of Parliament?—That is so.

6071. The Letter of Instructions must really conform with the obligations imposed by the Act of Parliament, and then, when the Letter of Instructions is issued by the King it will, of course, carry out what is said in that form with any other Instructions not inconsistent with what the Secretary of State would advise the King should be issued. That is the true position, is it not?—Yes, that is, generally speaking, the case.

Marquess of *Salisbury*.] Perhaps, Lord Reading would indicate—no man can do it better than himself—to the Committee if there was a lawsuit which turned upon the Act of Parliament, could it be pleaded as a valid explanation of the Act of Parliament that certain things were contained in the Instrument of Instructions?

Marquess of *Reading*.

6072. No, I should say not, because the Letter of Instructions, the Instruc-

tions of the King, are not part of the Act of Parliament. What I do suggest is that the subject would equally have his rights, because if the Letter of Instructions must not transcend any matters provided what is already in the Act of Parliament, then he has got his rights under the Act of Parliament for a breach of the Statutory rights conferred upon him, and that is what I understand is the Secretary of State's view?—Yes, that is, generally, the position; and if I may give a concrete instance in answer to Lord Salisbury's question: Supposing a subject wished to obtain redress upon the ground of discrimination against a minority, he would not base his case upon the Instructions, which would be the Instructions to tell the Governor how to apply the particular provisions in the Act, but he would base it upon the clause connected with the special responsibilities of the Governor, which would have statutory effect.

*Sir Tej Bahadur Sapru.*

6073. May I put it to Sir Samuel, that it would be extremely dangerous for anyone, without an actual suit arising, to commit himself to any particular view; that a Court of Law might take a view which we do not imagine to be possible now; and, in point of fact, the Instrument of Instructions has played a very great part in the development of the Constitutions in the Dominions. There are cases in which Instruments of Instruction have been referred to. Therefore, I say it would be very dangerous for anyone to assume what view the Courts of Law might take, until you have the concrete facts?—Yes, except to this extent, that here the case does somewhat differ from the kind of cases that Sir Tej has in mind, does it not, from the fact that there is this list of special responsibilities in the body of the Act. I would have thought—I speak with great deference in the presence of big lawyers such as we have got here to-day—that in a case of that kind both the Court and the complainant would base their case upon the provisions in the Act, rather than upon anything outside the Act.

*Sir Tej Bahadur Sapru.*] But I did not exclude the Instrument of Instructions altogether—that is the point. The point I am making is that the Instruments of

Instruction which you are providing are statutory Instruments of Instruction. There is no reference to the Instrument of Instructions in any one of the Dominion Constitutions, and that is a point we went into last year with you, that we want the Instrument of Instructions not to be merely a conventional document, but to provide a statutory basis.

*Marquess of Reading.*] May we just get this clear, Sir Tej? Although letters of instructions may possibly be referred to by a Court in Law in trying to construe what is intended, it does not affect the position. No rights are founded upon it by the subject, that is, no rights which can be dealt with by a Court of Law. I think we always have to bear in mind, if I may make this last observation, and apologise for having taken time—we also have to remember that hitherto Letters of Instructions have never been the subject of Acts of Parliament. They are introduced for this purpose because of certain difficulties, into which I do not enter with the Secretary of State, and, of course, there are certain matters relating to it which may be said never to have been considered by a Court of Law, but we do think we have to keep this quite clear, if I may respectfully suggest it to the Committee, and I think it follows from what the Secretary of State has said, that we have to be very careful that in this Committee we do not do anything which will interfere with the prerogative rights of the Sovereign. The Sovereign issues his Letters of Instructions to his Governor-General or his Governor, and, of course, on the advice of the Minister who is responsible to Parliament; that Minister, naturally, does not go beyond the rights which are in the Act of Parliament. I think that helps to keep the whole thing perfectly clear in our own minds.

*Viscount Burnham.*] May I ask Lord Reading this question, to clear my own mind? Would it be true to say that in future in Courts of Law the Acts of Parliament have to be read and treated in the light of the Instructions?

*Marquess of Reading.*] No, most certainly not. The Act of Parliament—I speak in the presence of the Lord Chancellor and other lawyers—would have to

be construed by the words of the Act of Parliament, including everything in the Act of Parliament, and, consequently, it may be that there may be reference to the provisions in the Act of Parliament which has definitely enacted that certain things must be in the Letter of Instructions; but, beyond that, no.

Lord *Eustace Percy*.] Might I, in order to clear my mind on this point ask Lord Reading: Do I understand Lord Reading thinks it would be impossible for a subject to impugn in the Courts an Order by which he had suffered (an Order issued by the Governor) on the ground that it was not issued on the advice of his Ministers?

Marquess of *Reading*.] No; I have never said that, or anything approaching it.

Lord *Eustace Percy*.] That would be entirely on the basis of the Letters of Instruction.

Marquess of *Reading*.] What I have been trying to point out is that, in my view, a subject would have no right of action on the Letters of Instruction.

Lord *Eustace Percy*.] Why not?

Marquess of *Reading*.] Because it is the King's Prerogative to issue that Letter of Instructions; it is not part of the Act of Parliament. It is a confusion between two things. For the first time an Act of Parliament is to prescribe certain things which must be included in the Letter of Instructions. That is a right, and, if they are not included in the Letter then, whatever rights there are of objecting, will be there; but once the Letter of Instructions is issued the Letter of Instructions in itself cannot give a right to a subject to bring any action in a Court of law. He must turn to his statutory rights.

Lord *Eustace Percy*.] The Clause in the Statute saying that certain things including the action of the Governor on the advice of his Ministers, were to be included in the Letter of Instructions would give a basis to the subject.

Marquess of *Reading*.] On the Statute, but not on the Letter of Instructions. If no Letter of Instructions was issued that position would be exactly the same because the Governor remains liable; he remains under the obligations to do the things, as the Secretary of State has

pointed out, by the Statute. The Letter of Instructions is the thing which is issued to him, and which tells him to carry them out. I remember when I went out as Governor-General a Letter of Instructions was given to me from the King. It was not an Act of Parliament, but what I was getting was a Letter of Instructions from the Sovereign whose position I was to take in India, subject, of course, to all the checks of Parliament, etc., telling me what it was that it was intended I should do, and drawing attention to certain specific things, but it goes no further. You could not, for example, as Governor-General, or Governor, say: "I will turn to my Letter of Instructions to see what I have to do." They may help the Governor and the Governor-General, and they do, but I suppose it would be no exaggeration to say that nine out of ten things would only come under the very general words of the Letter of Instructions, such as Lord Eustace Percy has just pointed out; for example, that in certain cases he must follow the advice of Ministers save in instances which are given in the Statute, but the question put brings out quite clearly the point that was made, that is, that the rights of the subject and the rights to be construed by the Court are the rights which are prescribed within the Statute itself, and cannot travel outside. I think the Lord Chancellor will agree with that. It is not difficult at all to a lawyer.

Lord *Chancellor*.] I quite agree with what the Noble Marquess has said. If you translate it into very simple legal language there is an Act of Parliament which every subject is entitled to take advantage of. There are certain instructions to the Governor. He has to do A, B, C, D and E. Supposing he fails to do A, B, C, D and E, no subject can sue him in his private capacity, and no subject can rely upon his failure to do it in any suit that he has against any other subject.

Sir *Hari Singh Gour*.

6074. In a word, the Letters of Instruction create a moral as distinct from a legal obligation?—No, I do not think so. The Act creates the rights. The Instructions interpret the way in which the Governor is to apply his duties towards those rights.

Sir *Austen Chamberlain*.] May I say that my layman's mind has not yet got quite clearly before it the actual condition of affairs as portrayed by Lord Reading and the Lord Chancellor, but perhaps we might come back to that in discussion and continue at this stage the examination of the witness for which very little time remains.

Sir *Phiroze Sethna*.

6075. As a result of the discussion that has just taken place, I hope, Mr. Secretary, you will consider it advisable to include in the Constitution Act as many points as possible, and leave very few to the Instrument of Instructions?—Is that in the form of a question?

6076. It is a suggestion?—Or is it merely in the form of a pious opinion?

6077. It is a suggestion?—If it is put to me as a question, and my silence is taken to imply assent, I think I had better make a reservation. I would point out to Sir *Phiroze Sethna* the danger of applying too rigidly the kind of line that he has just suggested. I myself regard the Instrument of Instructions as a very valuable vehicle for future development. They have this advantage over an Act of Parliament that they are somewhat more elastic and flexible, and, whilst I quite agree with him that all the important rights and issues should be in the Act of Parliament, I think he will find, upon further thought, that the Instrument of Instructions may provide a very useful vehicle for instructions in the future as to the interpretation of these constitutional rights.

6078. I will not pursue the point further, as we will take it up when we discuss the question later. Sir *Malcolm Hailey* rather suggested the appointment in the different Provinces of a Secretary to the Governor. May I know if he is to be in substitution for the Private Secretary and Military Secretary in the Presidencies and Private Secretary in the Provinces, or in substitution of these officers?—We purposely do not make any distinction. We believe it very well may vary from Province to Province, and all we do under the White Paper is to give the Governor power to have what staff is thought necessary for carrying out his duties.

6079. If the recommendation is carried out, Sir *Malcolm Hailey* suggested that the officer chosen would be drawn from the Indian Civil Service?—(Sir *Malcolm Hailey*.) Not necessarily.

6080. He may be even outside any of the Indian Services?—Yes.

6081. According to the White Paper a Governor may exercise his rights under the headings of special responsibility. Is he expected to take the opinion of the Governor-General in that connection, or is he to act on his own?—(Sir *Samuel Hoare*.) Sometimes it would happen in one way, sometimes in the other. I should not like to be rigid about it. I can imagine that in a case of great importance he certainly would consult the Governor-General. I can imagine in cases of lesser importance he would act upon his own initiative.

6082. If there is a difference of opinion between the Governor-General and the Governor what is to happen?—The Governor-General has the last word.

6083. In paragraph 70, sub-paragraph (i), it is proposed that the administration of the Sukkur Barrage be made a special responsibility?—What is in our mind in making that proposal is this: Very large sums of money have been spent upon the Sukkur Barrage. A large debt has been undertaken to get the Sukkur Barrage started, and the Sukkur Barrage, in our view, owing to its great importance, is of more than purely Provincial interest, both on account of its size and on account of the large sums of money that have been sunk in it. That being so, and, in view also of the fact that for some years to come Sind will be a deficiency Province, we felt that the Governor-General and the Federal Government have a somewhat exceptional interest in a great work of this kind.

6084. Under Proposal 74 you prescribe a time limit of 10 years, after which alone a Province with one Chamber can ask for a Second Chamber, or vice versa. Is it necessary to prescribe such a long time limit?—I am inclined to think that upon the whole it is better, when great Constitutional changes take place, not to have the roots dug up too quickly. That is the reason why, under our provisions, we do not contemplate, except in one

or two minor exceptions, alterations in the franchise, or alterations of this kind. We think, speaking generally, it is much better that there should be a period in which no changes of this kind do take place.

Sir *Phiroze Sethna.*] In Proposal 77 you provide for a member of the Council of Ministers in one House to have the right to speak in the other, but not to vote. As far as I see I think there is no similar reference in regard to the Central Legislature.

Mr. *Rangaswami Iyengar.*] There is.

Sir *Phiroze Sethna.*

6085. I stand corrected. As regards the appointment of an outside man as Minister, the White Paper gives the right to the Governor to make such an appointment, provided he can find a seat within a specified time. I think Sir Austen Chamberlain put to you a question to which you replied, and I think it follows from the White Paper that where there are two Chambers, and because the Governor has the right to nominate some in the Upper House, he could appoint such a person in the Upper House, and he would have the right to speak in the Lower House. May I suggest your following the present example where a Governor can appoint an expert during the passage of a Bill to be a member whilst the Bill is under consideration. Will you consider the possibility of a Governor appointing one or two men at the very most in a Province where there is no Upper House, so that he may act as a Minister, and that such appointment is to continue only so long as he is a Minister?—I am not quite clear about this proposal. What exactly would be the position of this Minister?

6086. He would be nominated?—Yes, I quite see he would be nominated. To whom would he be responsible?

6087. To the Legislature?—If he is responsible to the Legislature then he becomes for all ordinary purposes a Member of the Government.

6088. Yes, because he is going to be appointed a Minister?—But is not this a difficult plan to work—a plan in which you impose somebody upon a Govern-

ment, it may be for a few days or a few weeks; he goes into the Government and he comes out of it.

6089. It is a suggestion for you to consider. You invited the Delegates to make suggestions?—I quite agree. I would always consider suggestions. Offhand, I do not see how it would work.

Mr. *Rangaswami Iyengar.*

6090. Sir Samuel Hoare, I desire to pursue a little farther this question of the transfer of Law and Order and special responsibilities in respect of a grave menace to peace and tranquillity. I take it, Sir Samuel, that the whole of the White Paper accepts the principle and policy, which the Prime Minister laid down in 1930, that responsibility for the government of India in the Provinces and the Centre should be placed on Legislatures, Central and Provincial, so the primary purpose of the White Paper is the transfer of responsibility to Ministers under responsibility to the Legislature. I take it that that policy is the accepted policy of the White Paper?—Yes, certainly it is one of the bases of the White Paper. I would not say it is the only basis. It is one of them.

6091. I take it that the new defined category of special responsibilities is one of responsibilities, not to the Legislature, but to Parliament, to the Governor-General, or to the Secretary of State, as the case may be?—Yes.

6092. Therefore, to the extent to which you constitute special responsibilities, there is a deduction from responsibility to the Legislatures in India?—Yes; that has always been assumed from the very earliest discussions we have had, particularly the discussions upon which the Prime Minister's statement was based, namely, that the transfer of responsibility carried with it the necessity of also having safeguards.

6093. Quite?—And the safeguards are now set out in this field of special responsibilities and in other provisions of the White Paper.

6094. I am merely asking you to consider whether the provision of safeguards is the same thing as the provision of a deduction from responsibility. What I



am saying is that it is not a case of safeguards being provided, but it is a case of a deduction from the quantum of responsibility in your special responsibility. Is that so?—In my view, the two things are one and the same; it is the way we interpret the safeguards.

6095. I only wanted to make that clear for this purpose, namely, that in regard to safeguards as to Law and Order, the special responsibilities defined in paragraph 70 relating to the prevention of grave menace to the peace and tranquillity of any part of the Province, so far as that is concerned, you will agree that the conditions in which the Governor will exercise that power will be those in which he has failed to convince his Ministers about taking that action themselves; that they refuse to take the action which he has suggested to them?—I should think that might be the case.

6096. It is only in such a case that his intervention will come?—I would always hope that a crisis would not arise and that he would be able to persuade his Ministers to take the action that he thought was necessary.

6097. I quite agree. Even in such a case, in answer to the noble Lord, Lord Salisbury, you pointed out that it may be possible for the Governor to obtain other Ministers who would be prepared to shoulder the responsibility for the other measures which he thinks essential for the prevention of disturbances?—I think very often he would find it possible to obtain an alternative government.

6098. And therefore so long as he can pursue that method he would not pursue the method of acting on his special responsibility?—So long as he can get Ministers and the Legislature to avoid any question of the infringement of his special responsibilities, obviously he will not intervene.

6099. Therefore, I take it, Sir Samuel, that where the Governor fails to secure an alternative Ministry, he can also proceed by way of dissolution to find out if he can get an alternative Ministry?—Yes, he might take that course.

6100. Therefore, all these alternatives are present to him, and only in the event of his being unable to pursue those alternatives would he think it necessary to act on his own special responsibility?

—You cannot say offhand exactly what will happen, I could not possibly say either Yes or No to a question of that kind. It must really depend on the situation.

6101. What I am really putting to you, Sir Samuel Hoare, is this: Where it is a question of grave menace to peace and tranquillity and the Governor is unable to obtain a responsible Minister to shoulder responsibility, either by an alternative Ministry or even by a dissolution, is it not a case virtually of a deadlock or a breakdown in the Constitution?

6102. I should not like to give a general answer to that question, either. Speaking generally, I want to see the Governor working as closely as possible with his Ministry. If his Ministry will not work with him, or a particular Minister will not take action in order to avoid a special responsibility being infringed, then, under the White Paper, we leave the Governor very free to take what action he thinks fit. The longer he can work with his Ministry, the longer he can work with the Legislature, the better for everybody concerned.

6103. I am putting it to you because you have, amongst the special responsibilities, put down the responsibility that in the event of a breakdown of the Constitution (that is, in the event of a breakdown of the Constitution, to use the words of the First Round Table Conference, on account of the difficulties which the Legislatures or the Executives make in preserving the Constitution and working along constitutional lines) the Governor or the Governor-General, as the case may be, will immediately suspend the Constitution and assume the responsibility for the Administration. What I am saying is that, when you have got that provision, and in all cases where a Ministry fails to grapple with cases of grave menace to peace and tranquillity, would not it be a case of breakdown, and is it not therefore unnecessary to have a clause to give him special responsibility to prevent grave menace to peace and tranquillity?—No, I would not at all agree with that point of view. I think there are many intermediate stages before a breakdown comes about, and I think it may well be that by one or other of those means: finding an alternative

Minister, finding an alternative Ministry, possibly by having a dissolution, the Governor may reach a situation in which the breakdown clause will not come into operation.

6104. Quite ?—I regard the breakdown clause as the final and ultimate sanction, and I think there ought to be many of these other stages before the breakdown actually takes place.

6105. I agree. Therefore, I take it, Sir Samuel, that you will begin by persuading the Ministry, and if you are unable to find an alternative Ministry, and to have a dissolution, and if there is a breakdown, the breakdown clause operates. What is the necessity for this clause for providing for dealing with a grave menace to peace and tranquillity by the exercise of special responsibility ? —It seems to me quite essential.

6106. In what way ? If this is the process by which the Governor has to pro-

ceed by persuading the Ministry, finding an alternative Ministry and having, a dissolution, and if all these things fail to take place and a breakdown occurs, where does the grave menace to peace and tranquillity arise ?—There may be an emergency of a much more sudden character which would not permit of all these stages, and in any case I feel clear in my own mind that you must leave the Governor's hands free, and the more you try to tie him up with definitions, so much the worse it will be for everybody. I feel myself that the line of wise development is to give the Governor General powers of the kind we put in the White Paper and to leave it to his commonsense and to the commonsense of his Ministers and the Legislature as to how those powers are applied.

*Chairman.*] We shall resume the examination of the Secretary of State and his Officers at 10-30 to-morrow.

*(The Witnesses are directed to withdraw.)*

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14th July 1933.

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Present :

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The MARQUESS OF LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl Peel.  
 Viscount Burnham.  
 Lord Ker (Marquess of Lothian).  
 Lord Hardinge of Penshurst.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.

Major Attlee.  
 Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
 Nawab Sir Liaqat Hayat-Khan.  
 Sir Akbar Hydari.  
 Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
 Sir P. Pattani.  
 Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

His Highness The Aga Khan.  
 Sir C. P. Ramaswami Aiyar.  
 Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. Rangaswami Iyenger.  
 Mr. M. R. Jayakar.  
 Mr. N. M. Joshi.

Begum Shah Nawaz.  
 Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Tej Bahadur Sapru.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Sir N. N. Sircar.  
 Sir Purshotamdas Thakurdas.  
 Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are again called in and further examined as follows:—

Mr. Rangaswami Iyenger.

6375. Sir Samuel, you told us yesterday that despite the methods of adjusting the relation between the Ministers and the Governor in respect of special responsibilities which are involved in persuasion, or in the formation of new Ministries, or dissolution and a resumption on breakdowns, you still wanted a power to override and act in case of grave menace on the Minister's refusal to act. You thought that provision was an additional provision which was also necessary. What I am asking you is that if apart from persuasion you reach a stage in which you override the Ministers, would not you, on the one hand precipitate what I may call a breakdown, or, on the other, weaken responsibility? On the one hand by insisting on carrying out your special responsibilities without seeking the constitutional methods that I spoke of, you would, in fact, be compelling Ministers who failed to realise their responsibilities in the face of a grave menace to insist upon their resignation, or, on the other, to feel that in all cases of grave menace to peace and order it is not their job? The responsibility is that of the Governor in all cases, and in that sense would you not weaken the responsibility of Ministers? —(Sir Samuel Hoare.) No, I do not agree with that point of view. I thought I had made that clear yesterday. I want to avoid the breakdown. I want these preliminary steps to be possible to avoid what is, after all, a very serious calamity namely, the breakdown of a Constitution

6376. If then without a breakdown the Governor constantly interferes whenever a grave menace happens, would not that lead to the practice of Ministers thinking that in cases of grave menace it is the Governor's responsibility?—No, I do not think so. I think it is an essential feature of a scheme of responsibility with safeguards.

6377. Then I want to go, in regard to this multiplicity of safeguards, to two matters both in regard to legislation and finance. Let us take clauses 88 and 89 of the White Paper. They lay down what I would call the negative power of interference of the Governor in the case of legislation which he considers objectionable, or in which he thinks the Legislature, or the Ministry, may have to reconsider their position, and, I take it, you expect in the normal course of Constitutional development this reserved power of the Governor will develop upon the same lines as in the Dominions. I take it that is so. Clauses 88 and 89 provide for the powers of reservation and a return of Bills, and the veto of Bills passed by the Legislature?—Yes, I think certainly the development will follow the line of development in other parts of the British Empire, but the special conditions in India must always be kept in mind.

6378. I take it that, apart from this negative power over legislation which you want to vest in the Governor you want to vest in him the affirmative power for legislation in respect of special responsibilities under Clause 93?—Yes.

6379. What I am saying is that as far as this affirmative power is concerned which follows the present procedure, when the Governor has that power you still want, under Clauses 103 and 104 another power of making ordinances in emergencies?—Yes.

6380. I am asking you whether the affirmative power of making ordinances is only to be exercised in emergencies and when the Legislature fails, and that therefore when that power is in his possession as it is to-day, whether the power of ordinance-making should be added in addition for the same emergencies and for the same special responsibilities?—Yes, I think certainly he must have the power of carrying into effect the duties that have been imposed on him. He must, therefore, have in his power the means of issuing some Executive Order of a wider description than an individual order to a particular official to ensure that his duties are carried out.

6381. That is true, but the power of making ordinances under Clauses 103 and 104 is the power of legislating?—Yes, and I can conceive of cases in which something more permanent than a temporary Order would be essential.

6382. But would it not be possible to use the power under Clause 93 for exactly the same purpose?—I think Mr. Iyenger is thinking of two issues: One issue is contemplated under Clause 103 in which the Governor would act on his own discretion in order to carry out his special responsibilities. The other case is quite a different kind of case contemplated in Clause 104, namely, the case in which the Legislature is not sitting, and in which almost every Government, as far as I know, in every part of the world has found it necessary to have some means of issuing Executive Orders of an emergency character.

6383. That is so. What I am saying is that under Clause 103 the Governor has not at the request of Ministers, but independently in respect of his special responsibilities, the power of issuing ordinances. Under Clause 93 he has the power in emergencies of putting a projected Bill before the Legislature, and, if it refuses, to enact it himself. That is Clause 92; I am sorry?—But the two contingencies contemplated are different. Clause 92 is not dealing with emergen-

cies at all. It is dealing with the general field of responsibilities.

6384. The special responsibility, so far as grave menace is concerned, for instance, is a matter only of emergencies?—Yes, but I think Mr. Iyenger's question was a much wider one than that. It was dealing with the special responsibilities altogether.

6385. That is true. What I am asking, Sir Samuel, is whether you will not consider taking, for instance, Clauses 92 and 93 and 103 and 104 together—whether you are not providing for what I may call a multiplicity of safeguards all of which are, except one or two absolutely superfluous, and whether this multiplication of safeguards will not really sap responsibility?—No, I do not think so at all. It is no good giving the Governor nine safeguards if the tenth is the only one he wants. It means that if you are going to have safeguards, the safeguards really must give him full and effective powers, and they must, therefore, cover the whole field of contingencies in which he might have to intervene.

6386. That is quite true. Take, for instance, Clause 104. There Ministers can apply for a temporary ordinance in emergencies, and put them before the Legislature for approval when the Legislature is in Session. Similarly, the Governor General can make a temporary ordinance if the Legislature is not in Session, and then, when the Legislature is in Session, bring that ordinance before the Legislature for confirmation, and, if it refuses, certify and carry on like that?—The Governor might adopt either of those two courses. Under our proposals he might issue an ordinance, and not bring it before the Legislature. If, on the other hand, he thought there was likely to be substantial support for it in the Legislature, he might wish to give it Legislative sanction, and give the Legislature the opportunity of embodying it in the Statute law.

6387. Would not it be right to make it obligatory on him to bring it before the Legislature. Why do you want to give him the power to enact these laws to have, if I may say so, effect for a whole year?—We are contemplating there may be cases in which the Governor has got to act quickly. In that case it might be

impossible for him to take an ordinance for discussion to the Legislature.

Sir *Austen Chamberlain*.] May I ask a question to get this clear in my own mind ?

Mr. *Rangaswami Iyenger*.] Yes.

Sir *Austen Chamberlain*.] Am I right in thinking that Clauses 93 and 94 deal with a case where a Governor finds it necessary to act upon his own responsibility, but that Clause 104 contemplates his acting by request of his Ministers when there is an emergency ?

Mr. *Rangaswami Iyenger*.

6388. That is Clause 104. I am referring to Clause 103 also ?—Sir Austen is quite right about Clause 104. With Clause 103 the Governor is entitled to act at his own discretion in the field of his own special responsibilities.

Sir *Austen Chamberlain*.] I beg your pardon. I thought the reference was to Clause 104.

Mr. *Rangaswami Iyenger*.] What I wanted to ask was that in the field of special responsibilities the Governor has, in the first place, the power of securing effective legislation on his own sole authority when the Legislature refuses, in emergencies, and in ordinary cases, under Clause 103 he may also enact measures without even giving the opportunity to the Legislature to discuss it. I am asking whether it is not a superfluity of safeguards.

Sir *Tej Bahadur Sapru*.] May I suggest whether it is not the case that Clauses 92 and 93 deal with cases which will have necessarily to go before the Legislature ? I am not expressing any opinion. I am only suggesting to Sir Samuel Hoare whether the true explanation is that Clauses 92 and 93 deal with cases of legislation which must necessarily involve going before the Legislature, whereas Clause 103 deals with cases of emergency where the Governor has got to take action promptly without reference to the Legislature.

Sir *Hari Singh Gour*.

6389. What about Clause 104 ?—I do not think it goes quite as far as that, but our intention is definitely to meet the two contingencies : first, the contingency in which the Governor has to act

at once ; secondly, the contingency in which he thinks there is time, and, if he so desires, to consult the Legislature and to obtain Legislative support for his action from the Council.

Sir *Tej Bahadur Sapru*.

6390. That is exactly what I said ?—Perhaps I did not follow your question.

6391. That is exactly what I said ?—Anyhow that is our position.

Marquess of *Salisbury*.

6392. Would it only be the issue of time which determines him ?—No.

6393. It will only be a question of whether he has got more time or less time ?—No ; he will have to take other things into consideration. Certainly I would not restrict it in any way to time. The Governor must have full discretion as to which line he adopts.

Mr. *Rangaswami Iyenger*.] I will leave it at that.

Dr. *B. R. Ambedkar*.

6394. I have not followed it. I think even under Proposals 92 and 93, although the Legislature may be in Session, the Governor will not be bound to put his legislation before the Legislature if he so thinks ?—That is perfectly true. The Governor has full discretion.

6395. The Governor has full discretion ?—Whether for ordinances or for legislation, on his own initiative.

Mr. *Rangaswami Iyenger*.

6396. May I suggest to you that you may re-examine these clauses and put in only the minimum of safeguards that are compatible with your requirements ?—We feel that is very much what we have done.

6397. I am sorry I must differ. Then I shall only refer to one other point. Will you kindly take Clause 96 in regard to Finance ; I am referring only to the constitutional aspect of it, not the financial part of it. The clause says that "the statement of proposals for appropriation will be so arranged as (a) to distinguish between those proposals which will, and those which will not, be submitted to the Vote of the Legislature, and amongst the latter to distinguish

those which are in the nature of standing charges" and the rest. "(b) to specify separately those additional proposals (if any), whether under the votable or non-votable Heads, which the Governor regards as necessary for the fulfilment of any of his 'special responsibilities.'" If the matters under special responsibilities are non-votable, why should we put in this clause about specific proposals, whether under votable or non-votable Heads? Is that a necessary clause? If it is, I want to ask you whether it is not now the case that proposals under non-votable Heads or under votable Heads will, under no circumstances, come under any of the special responsibilities which the Governors now possess, and they will not be able either to reserve them or to restore them if they are rejected by the Legislature?—I do not quite follow the question. Could Mr. Iyenger put it a little more concretely?

6398. Yes. The present state of things is that in the Provincial Legislature expenditure is to be under two heads, votable and non-votable. In regard to non-votable Heads the Council has no discretion. In regard to votable Heads the Governor can restore them if the Legislature rejects them, if he considers it essential to the discharge of his responsibilities. Under this clause I take it that expenditure which is votable, but which would come under special responsibility, will automatically become non-votable?—I think Mr. Iyenger really mistakes our conception of the field of special responsibilities. We do not conceive of the field of special responsibilities as a field covered by separate departments with separate votes. The special responsibilities are rather duties imposed upon the Governor that cover the whole field of government.

6399. That is true?—It is, therefore, practically impossible to distinguish in a budget between the two fields. What we wish to do is to enable the Governor to see that there is enough money voted to ensure such duties as are imposed upon him, such as the salaries of the services, the service of debt and so on; but there is no dyarchy in the provincial field.

6400. No?—It is that which distinguishes the position in the future from

the position that Mr. Iyenger has just described, namely, the position of to-day.

6401. That is true, but the salaries of services and various other things which are special responsibilities are made by Statute non-votable. What are the other things relating to his special responsibilities which would be votable and which would still, by reason of his special responsibilities, become non-votable? That is a category that I am not able to detect?—Supposing an emergency arose and the Governor, in the exercise of his duties, had to engage extra Police or had to involve himself in additional expenditure to meet the situation, that would be a case in point.

6402. I know; but it can be put before the House, and if it refuses it can be restored. That can be put before the Legislature and if the Legislature refuses it, it can be restored?—Yes; that is certainly so. At the same time, I wish again at present to remind you that the answer I gave just now covers this question as well, namely, that we must contemplate a situation in which the Governor may have, in the interests of everybody concerned—the interests of the Province, of course, in particular—to act very quickly.

*Sir Tej Bahadur Sapru.*

6403. May I put a question to clear up this point?—Yes.

*Sir Tej Bahadur Sapru.]* You contemplate that special responsibilities may include an item which under the present Constitution is votable.

*Mr. Rangaswami Iyenger.]* That is the point.

*Marquess of Reading.]* Will you repeat the question?

*Sir Tej Bahadur Sapru.*

6404. I was asking Sir Samuel whether the White Paper contemplates that special responsibilities of the Governor may include an item which under the present Constitution is votable?—No, that is not so. We do not include any item at all. What we do is: We give the Governor general powers to get enough money to carry out his special responsibility.

Mr. M. R. Jayaker.

6405. With respect to all items which under the present Constitution are votable by the Legislature, may I ask Sir Samuel whether the special responsibility will include an item in the budget which under the present Constitution is a votable item?—No, the field of special responsibilities is a field that pervades the general field of administration. There will, it is true, be certain items that will be non-votable, such as the salaries of officials; but supposing the Governor found that not enough money had been set aside for a votable head and there was not enough money for him to meet an emergency, then he would have the power of making an addition to the budget for the purpose of providing the money for those purposes. It would be votable in that case.

Sir Hari Singh Gour.

6406. Would it be subjected to a Supplementary Vote?—I could not possibly go into details of Parliamentary procedure as to how it should be done in a particular Council. I am going to ask Sir Malcolm, if I may, to put what I have said in perhaps more concrete terms, from his own administrative experience.

Mr. Rangaswami Iyenger.

6407. May I then put one question?—I would like Sir Malcolm to explain. (Sir Malcolm Hailey.) Section 96 of the White Paper is only a description of the arrangement of a budget; it does not, in itself, lay down anything as to what should be votable or what should be non-votable. It only says how a budget is to be arranged, and nothing more. If a Governor desires, in the exercise of his special responsibilities, to see extra expenditure incurred, whether under the votable or the non-votable Heads, that is to say, for example, if he desires to see additional expenditure on a non-votable Head such as pay of the services, or additional expenditure on a votable Head such as the Police Force, then he will have those put in the budget and shown separately under the provisions of sub-section (b) of Proposal 96. That does not alter the fact that they are

votable or non-votable, but if the appropriations he has asked for are not voted by the Legislature, then, under the provisions of Proposal 99, he can secure that they stand as appropriations, which is equivalent to our present procedure of certification. That is the explanation of that.

6408. I follow that. May I ask Sir Samuel and Sir Malcolm to follow the second paragraph of Clause 99. "At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations"—that is the first clause. In the second paragraph it says: "In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities"—there is a separate provision for the class of case which has been so clearly described by Sir Samuel and by Sir Malcolm—"so, however, that the total amount authenticated under any head is not in excess of the amount originally laid before the Legislature under that head in the statement of proposals for appropriation." I want to know what these additional amounts are, if they are not the amounts which Sir Malcolm has just described to us?—These amounts cannot exceed the original amount for which he has asked in the Budget. There may be a variation in the amounts, but the total cannot exceed the amount put down originally in the Budget; that is to say, he cannot when the Budget is concluded put in additional amounts for his own purposes.

Mr. Rangaswami Iyenger.] But what is the need for altering the Budget after it is passed by the Legislature?

Sir A. P. Patro.

6409. Suppose an item has been cut down by the Legislature, and a surplus grant has been asked for, 100,000 rupees, then he can only restore to the extent he originally asked for in the Budget and no more?—That is so.

Mr. Rangaswami Iyenger.

6410. In other words, if he has put down certain amounts for the exercise of his special responsibilities, they, by that very fact, become non-votable and the Council cannot touch them?—(Sir

*Samuel Hoare.*) No, that is not so at all. (*Sir Malcolm Hailey.*) They become votable, but if the Council touches them, he can restore them.

*Sir Joseph Nalk.*] May I suggest that the procedure is very clearly indicated in paragraph 39 of the Introduction ?

*Mr. M. B. Jayaker.*

6411. I take it, Sir Samuel, that you are aware that the Governor's Instrument of Instructions has been used in many Dominion Constitutions for the purpose of securing Constitutional advance within certain limits by varying them from time to time ?—(*Sir Samuel Hoare.*) Yes, that is so.

6412. Can I take it that it is the intention of His Majesty's Government to leave for similar purposes enough scope and latitude in the Constitution Act ?—Provided always that the Instructions have the sanction behind them of the two Houses of Parliament.

6413. I mean, subject to Proposal 64 ?—Yes.

6414. I am speaking, subject to Proposal 64 ?—Yes, that is the case.

*Sir Tej Bahadur Sapru.*] Sir Samuel, I propose to ask you just a few general questions, and then to refer to you certain sections which I want to clear up. You have been explaining to us during the last three days the Constitution for the Provinces : Am I right in assuming that you look upon that Constitution as a part of an integral whole including the Constitution of the Centre ?

6415. Yes ; I have always said so, and I maintain that position.

6416. This Part of the White Paper, the Part of the White Paper which deals with the Provinces, has a direct relation to the Centre ?—Yes. The two have been worked out certainly as parts of a comprehensive whole.

6417. I want to be still more clear about it, because that is a matter of very great importance from our point of view. Supposing Part I of the White Paper which deals with the Centre were to be taken out altogether or dropped ? I can imagine Part II, which deals with the Provinces, requiring very material alteration under those circumstances ?—I would not like to say how much alteration it would or would not involve until

I had looked very carefully into it. It would certainly be true to say that some alteration would be necessary.

6418. Now, coming to the question of the nominated Minister, which was put to you by Sir Austen Chamberlain the other day, have you satisfied yourself as to whether Indian opinion here or Indian opinion in India will favour the inclusion of such a nominated Minister ?—No ; I have not had an opportunity of consulting either the Delegates here or opinion in India upon the proposal. It was something in the nature of a new proposal. Hitherto, I think, we had contemplated that a nomination of that kind would, or would not, be made at the discretion of the Governor. I do not think we had contemplated the contingency of a nomination being made upon the advice of his Ministers, and I should welcome any opinion that Delegates here would give me on the subject.

*Sir Tej Bahadur Sapru.*] I do not want to interrupt the cross-examination, but I may say that I am definitely opposed to it, as I think it will destroy the growth of Party system in India, quite apart from other reasons.

*Sir Austen Chamberlain.*] I hope we may have an opportunity of discussing that.

*Sir Tej Bahadur Sapru.*] Yes.

*Sir Austen Chamberlain.*] I will not interrupt now.

*Sir Tej Bahadur Sapru.*

6419. Now with regard to Second Chambers. Putting it at the lowest, is it or is it not correct that so far as Indian opinion is concerned, it is not overwhelmingly in favour of Second Chambers in the Provinces ?—I should think that would be the case ; but I think it would be equally true to say that opinion was not overwhelmingly against the proposal.

6420. Take, for instance, the three Provinces in respect of which the recommendation is that there should be Second Chambers, and if you look to the numbers which are provided for the Second Chambers for each one of those Provinces, are you satisfied that you could get an adequate number of men of the type who ordinarily go into the



Second Chamber and exercise the function of a revising body—the United Provinces, Bihar and Bengal?—I think certainly with Bengal. What does Sir Malcolm say about the United Provinces?

6421. Sixty in the United Provinces, and, I believe, the number of men in Bengal is 65?—(Sir *Malcolm Hailey*.) I think I should rather regret it, if I had to say that a Province of 49,000,000 people with five Universities in it and a long record of political work could not provide 60 fitting representatives for an Upper Chamber.

6422. I am not referring to the Universities. I am talking of the Zamindars from whom you will recruit. Can you say, from your experience of the United Provinces that you can have 60 men belonging to that body who can effectively perform the function of a revising body?—I will not admit in the first place that it is entirely Zamindars from whom we should recruit. The proposals for the Constitution of the Second Chamber have not been definitely laid down in the White Paper, but such proposals as there are, give you not only a high franchise but a suggestion that you should take representatives from men of experience and position in various classes of society, and I contemplate that the result of those proposals will be that you will take not only Zamindars but men of position in the commercial world, and men who have been officials, who have served in the judicature or have secured positions in the local bodies. It ought not to be difficult to find 60 fitting men from among those classes.

6423. Then coming to some sections, will you kindly turn to Proposal 65, where you say: "The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or the salaries and allowances of his personal and secretarial staff, will be fixed by Order-in-Council". You know that there is a great difference in the salaries of Governors in various Provinces. Is it intended to maintain the present scale everywhere, or to revise the scale of salaries?—(Sir *Samuel Hoare*.) I think we should greatly prefer to keep our hands free and to consider the situation at the time, no doubt Province by Province.

6424. For instance, the Governor of Assam gets the lowest salary; then the Governor of the Central Provinces gets a slightly higher salary; then the Governor of the Presidencies and the Governor of the United Provinces get one scale of salary; the Governor of Bihar and of the Punjab get a smaller salary. What is your anticipation?—To be quite frank, I have not got one at the moment.

6425. But I hope you will go into this question?—Certainly we shall have to at some time.

6426. I will not trouble you with No. 67, because Mr. Jayakar has already put to you that question. Coming to Section 70, which deals with the safeguards: Am I right in assuming that your scheme is this, that the entire sphere of the administration is to be divided into two parts, one being within the control of the Minister and the other being within the control of the Governor, and it was only when any one of those contingencies arises, which are mentioned here, that the Governor will be required to exercise these functions?—No, there are not two distinct fields. You cannot say, if you look at the list of the special responsibilities, in No. 70, that they cover separate Departments of Government; they are duties extending over many fields of Government, but the Governor can only intervene in the case in which those duties are endangered.

6427. Take, for instance, Land Revenue, Forests or Excise: There are no safeguards provided there. The Governor could under no circumstances intervene in regard to those matters; he could intervene only in regard to peace and tranquillity of the Province?—I can conceive—it may be very unlikely, but there might be a great emergency arising over some very dangerous action taken, say, with Land Revenue, and in that case, if there was a grave menace to the stability of the Province then the Governor could intervene; but there is no question whatever of his intervening in the normal administration of Departments of that kind.

6428. He can only intervene in regard to Land Revenue, Forests and Excise, if the action of the Legislature or the

Minister endangered any one of the responsibilities?—Yes, certainly.

6429. But not otherwise?—Not otherwise.

*Mr. M. R. Jayaker.*

6430. I just want to ask one question. Is it the conception of Proposal 70 that the special responsibility of the Governor covers the whole field of administration, if the contingencies mentioned in that clause arise?—Only if the contingencies mentioned in the clause arise.

6431. But they cover the whole field of administration?—I think that is inherent in any scheme of safeguards.

*Sir Tej Bahadur Sapru.*

6432. Take, for instance, the Constitution of the Revenue Courts, their powers and functions in the United Provinces, and things of that kind, would it be open to the local Legislature to modify or alter them?—Yes.

6433. Supposing the Legislature passed any law regulating the relations of the landlords and the tenants, would the Governor step in on the ground that he apprehended very serious danger?—It would have to come within one or other of these fields of special responsibility. He could not go outside the list set out here.

*Lord Eustace Percy.*

6434. May I, just to clear up that point, ask a supplementary question? It is not, is it, intended that the Governor's power of veto should be limited by his special responsibility?—No; there is no provision to that effect. I wonder whether it would make the position clearer to the Committee—I made some notes last night upon the general position of the Governor and his special responsibilities—if I read these notes out. They are quite short, my Lord Chairman.

*Chairman.*

6435. If you please?—I should like to say that the impression left upon my mind by some of the questions put to me yesterday and the day before is that they were prompted by a conception of the purpose and effect of the proposals relating to the Governor's special responsibilities which differs a good deal from my own. Some of the

questions put to me seem to suggest that the questioner views the Governor of the White Paper scheme as having little or no contact with his Ministry in the affairs of his Government until he discovers that their proposals or their actions have compromised, or are about to compromise, his ability to discharge the responsibilities imposed upon him personally by the Constitution Act; whereupon the Governor suddenly intervenes in the affairs of some Department, overrules the Minister (or, perhaps, the collective Ministry, if they agree with their colleagues), is faced by resignations or, perhaps, himself resorts to dismissals, and proceeds by a regular process, from overruling, through dismissal or resignation and dissolution, to the ultimate debacle of a breakdown of the Constitution and the assumption of all powers into his own hands. In fact, if I understood Mr. Iyenger correctly yesterday, he actually suggested that there was really no need for the limitation of the responsibility of Ministers in the shape of the Governor's special responsibilities, since the failure of Ministers to deal adequately with, for example, a grave menace to peace, would inevitably constitute a breakdown of the Constitution, the Governor would always be able in the last resort to conduct matters in his own way through the "breakdown provision." This is not at all my conception of the purpose and effect of the White Paper scheme, and I venture to urge upon the Committee and Delegates a close study of paragraphs 23 to 44 of the Introduction, and particularly of paragraphs 26 and 42. The point I wish to emphasise is that the "special responsibilities" enumerated in paragraph 70 of the White Paper are not special subjects (this is the important point) which are kept out from the purview of Ministers, and reserved for the control of the Governor. I should describe them rather as signposts or labels indicating to the Governor, and incidentally to his Ministers, certain purposes the fulfilment of which the Governor is directed to secure, if necessary, by refusing to be guided by his Ministers' advice whenever he considers that the advice tendered to him would be inimical to the fulfilment of any of these purposes; and, if necessary, again, by calling to

his aid his "special powers" properly so-called in relation to legislation and finance. We are all agreed that the responsible Government which is to result from these discussions is to be accompanied by safeguards. One obvious means of providing a comprehensive safeguard would be to say that the Governor is to be free to make his own judgment as to the requirements of "good government", the test in all matters as to whether he will or will not be guided by his Ministers' advice, and, of course, to arm the Governor with the necessary powers to make his judgment effective. But, although such a plan might result in fact in responsible government it would hardly bear the stamp of responsible government, on the face of it. The difficulty arises when you try to limit your safeguarding provisions with the object (to the extent to which you do limit and define) of leaving the rest of the field free for the exercise of Ministerial responsibility. The device of limitation by division of subjects or Departments is dead under our scheme for the Provinces. The plan of the White Paper is to limit by carefully defined *purposes*: and the basic assumptions which I make for the working of this plan are, firstly, that there will be no necessary conflict between a Governor and his Ministers and Legislature as to the desirability of securing the purposes we have specified, and, secondly, that the Governor who is and must be in form the Executive (that is, the Crown's deputy, for the purpose of administering the Government) will work throughout in the closest touch with the Ministers whom he appoints in order that he may pass on to them the responsibility for the Government to the fullest extent which is compatible with the fulfilment of his own defined responsibilities to the Crown and Parliament; and thirdly, when occasion does arise for implementing his own responsibilities, the Governor's powers for this purpose must be clear and effective and unquestionable and that he must be free to use them in the way that seems to him best suited to the particular situation with which he is called upon to deal.

6436. Thank you. Before I pass on to another Clause of the White Paper I should like to clear up one or two more points under Clause 70. Take, for in-

stance, a case like this: The United Provinces Legislative Council or Assembly proposes to pass legislation conferring upon the tenants at will, or non-occupancy tenants, full occupancy rights. Would it be open to the Governor under one of these Clauses to interfere?—(Sir Malcolm Hailey.) It would not be open to him to interfere on the administrative side under Clause 70 unless any action contemplated by Ministers in that regard was likely to give rise to any grave menace to peace, or it might be to impinge on the legitimate interests of minorities, though, personally, I think it would be somewhat difficult to bring either of the two classes, who would be brought into conflict by such legislation, under that clause. His power of refusing assent would not be affected by anything in Clause 70, that is to say, it would not by Clause 70 itself be confined to maintaining his special responsibilities. In the terms of the Constitution at all events his power of refusing assent is not fettered by any prescription that he can only exercise it in pursuance of his special responsibilities.

6437. Sir Malcolm, would you consider this case? I am not talking of any administrative action on the part of the Government, but of Legislative action. Supposing the United Provinces Legislative Council passed an Act conferring upon the tenants full occupancy rights, and the Zamindars in your Province objected to that, would the Governor in a case like that be justified in interfering merely because the Zamindars are opposed to the extension of the rights of the tenants?—You mean, would he be justified in refusing his assent to legislation?

6438. That is different. Interfering under any one of these Clause 70 sub-clauses, could the Governor then say: "Government is going to lose the support of the Zamindars. It is going to create dissatisfaction among them which may ultimately lead to the disturbance of peace and tranquillity on the part of the Zamindars, therefore I am justified in interfering there"?—I think that must remain for the judgment and conscience of the Governor of the time how far he judges of the circumstances that are likely to arise out of such proposals, and how far he is will-

ing to press his own interpretation of sub-clause (a) of Clause 70.

Marquess of *Salisbury*.

6439. I understand Clause 70 has no bearing whatever on the legislative power of the Governor. Constitutionally he is quite free to withhold his consent to legislation without any reference to Clause 70 whatever. Is not that so?—Constitutionally, that is so.

Dr. B. R. *Ambedkar*.

6440. I want to pursue this point a stage further. You said that would depend on the circumstances of the case. That was not the question of Sir Tej Sapru. The question is, is this Clause wide enough to give the power to intervene and say: "No, this will interfere with peace and tranquillity, and I will not allow you to introduce this legislation"?—The Clause is merely wide enough to allow the Governor to take action if he is convinced that it will lead to a grave menace to the peace and tranquillity of the Province, not merely that he thinks such legislation is undesirable in the interests of one class or another.

6441. If he comes to that conclusion this clause is wide enough for him to say: "I will not allow you to proceed with such legislation"?—I can only say we have had in the United Provinces within the last two years the menace of very grave trouble indeed arising out of the agrarian situation, and dealing with the rental question. There was a stage then when, in my opinion, this clause would undoubtedly have applied, but it would have applied because there was threatening of actual risings of tenants in certain parts of the Province. I would not have held that it would have applied if it had been merely the case that one class or other would have been prejudicially affected by the Legislature.

Mr. M. R. *Jayaker*.

6442. Supposing in the Provincial Legislature a Bill is introduced for the purpose of allowing the depressed classes people to enter certain public temples, and it causes commotion in the Orthodox Hindu community who threaten to create a disturbance, will it

enable the Governor of the Province to interfere on the ground that he is doing so for the prevention of a grave menace to the peace and tranquillity of the Province and stop the Bill?—Not unless the grave menace is in his mind a visible one and imminent.

6443. He will be the sole judge of that?—Yes.

Marquess of *Salisbury*.

6444. Did you say a "visible" one?—I may not have chosen the words very well, but I think a Governor would say to himself: "If it is only likely that at some very distant date some trouble may arise, or if I have only a vague fear that this may cause trouble", then I do not think that in his conscience he could say that that clause applied, but if he saw, as he very well might see, that as soon as this legislation was brought forward excitement was rising; people were actually resorting almost at the time to violence—if from that he drew the conclusion that as soon as any action was taken under such a Bill there would be violence and a grave menace to tranquillity, then under this clause he would have undoubtedly not only the right but the obligation of interfering.

6445. Whatever adjective you use there is no word like "visible" or "imminent" to be found in the clause in the White Paper?—No, and that is why I withdrew those words. I tried to amend them afterwards.

6446. I am not criticising your choice of adjectives. Please do not think that for a moment, but there is no adjective of any kind. It is quite clear "The prevention of any grave menace to the peace or tranquillity of the Province or any part thereof"?—Yes, and I was aware that those words were not very well chosen. I was trying to get into the attitude of mind of a Governor who was faced with a trouble of that kind.

6447. We are very much obliged to you, but what you really mean is that these words ought to be amended?—No, I do not.

Lord *Irwin*.

6448. What Sir Malcolm meant, I should have thought, was that the interpretation of these words in a good many

cases of administration would be a matter of discretion of the Governor. He was trying to interpret how the Governor's mind worked?—That is so. I was trying to get into the mind of the Governor when he was looking at the circumstances and the words of the Act.

*Marquess of Reading.*

6449. I understood Sir Malcolm to be drawing the distinction between a Governor considering for the purpose of exercising his powers under the special responsibility and the case where he thinks "in the immediate future as far as I can see there is grave menace" in which, according to him, he would be bound to act. But he may think that in a year or two's time, in consequence of development, and so on, or some considerable time ahead, there may be a grave menace in which case, I understood Sir Malcolm to say, putting those facts merely for the purpose of bringing out his point, he did not think in the latter case he would be justified in interfering at that moment. Is that right, Sir Malcolm?—Yes, that was generally my meaning.

*Marquess of Zetland.]* It must always depend on the judgment of the Governor. He has complete power under this clause.

*Marquess of Reading.]* Complete.

*Sir Austen Chamberlain.*

6450. Your view, Sir Malcolm, is that the Governor must use his discretion in the light of the particular circumstances when they arise?—Yes.

6451. And that it is impossible to lay down any precise rule beforehand?—Certainly.

*Lord Rankeillour.]* On the face of this clause it refers to administration only. Does Sir Malcolm interpret the word "administration" as including the supervision of legislation before it is passed by the Assembly?

*Lord Eustace Percy.]* Clause 94.

*Lord Rankeillour.]* Is that covered by the word "administration"? It does not seem to imply anything to do with administration. We are talking of Clause 70. That is what I wanted to know.

*Lord Eustace Percy.]* Clause 94.

*Lord Rankeillour.]* Yes, I think that answers it.

*Marquess of Salisbury.*

6452. I understand Clause 94 would be one of the clauses which would be included. That would be one of the things which he might be guided by, according to Sir Malcolm's canons?—If we are to draw a distinction between administration and legislation, Clause 70 does apply in terms to administration. The clauses which apply to legislation are Clauses 88 and 89, in which the Governor's power of refusing assent is not fettered by any special condition laid down in the Constitution, and Clause 94 in which it is laid down that the Governor can intervene on the introduction of a Bill, or on any amendment of a Bill, but, in this respect, his power of intervention is limited to the discharge of his special responsibilities.

*Marquess of Salisbury.*

6453. But it is not suggested, is it, that in Clause 88 the Governor would be limited by the provisions of Clause 70?—No.

6454. You mentioned Clause 88 then?—Because, as the Secretary of State said yesterday, in answer to a question, that is a general power, and is not limited to the exercise of special responsibilities.

*Mr. Zafrulla Khan.*

6455. If Mr. Iyenger will permit me an intervention, may I put this to Sir Malcolm Hailey. That is the interpretation to be put upon this clause. Would Sir Malcolm Hailey consider this, that whatever measure was before the Cabinet, whether a measure of proposed legislation, or of administration, or any other measure of policy, and any section of the population of the Province was opposed to that measure, then all that they have to do to attract the intervention of the Governor would be to start an agitation, and to threaten violence, and, if they know that the Governor has a power of intervention in such cases, the surest way of starting an agitation would be to say that if you carry agitation to a certain point the Governor will interfere. Would it not be putting a premium on agitation

to give to the Governor power to intervene outside law and order under this Clause ?—I think, if I may say so, your interpretation puts a certain limitation on the good sense of the Governor. I think the Governor would be able to discriminate between a factious agitation used for the purpose of putting pressure on him, and a real agitation which might lead to a menace to peace and tranquillity.

6456. Unless an agitation is genuine in the sense that it continues from day to day, and goes on increasing in volume, the Governor will not intervene. Supposing it is with the object of putting pressure on the Governor, how is he to get out of this difficulty that the agitation goes on growing in volume every day, because he has not interfered. Would not the mere fact that he has power of intervention outside law and order, in order to prevent legislation, tell the people that one means of obtaining the redress and stopping this policy was to go on putting greater and greater pressure on the Governor, otherwise he would not exercise his discretion in their favour ?—I imagine that is a method by which you put pressure on Governments in any country, and Governments always have to decide whether they will yield to pressure or not. In this case you are not merely putting pressure on the Governor, but you would be putting pressure, as a matter of fact, not merely on the Governor, but on the Governor and his Ministers, and the Ministers would then have to decide on their policy with the Governor.

Marquess of *Lothian*.

6457. In the exercise of this responsibility will not the Governor have to consider just as much whether to interfere and overrule his Ministers will not lead to a greater menace to peace and tranquillity than to yield to a factious agitation outside ?—That is one of the many difficult circumstances which I think the Governor would have to decide on. I would have thought, speaking with general and not special knowledge, that in the kind of case suggested by Mr. Zafrulla Khan, the Ministers would really be fighting that kind of factious agitation. The Ministers presumably would not at all wish the Governor to intervene over their heads, and it would

be very much to the interests of the Ministers to suppress it. I would have thought the main brunt would have fallen upon the Ministers.

Marquess of *Reading*.] May I make a suggestion : That in the present day, and certainly for the last ten years, since the Reforms, not to go back further than that, the Governor-General has always had this responsibility upon him during the whole of that time and has had to exercise it. All this kind of question comes up to the Governor-General who has then to make up his mind as to whether or not it is a factious opposition. Really what he determines for himself is : Is it a great menace, in which case, he must intervene. Of course, there are differences. We are talking about responsible Ministers, but it does not alter the fact that the kind of responsibility which is here put upon the Governor is exactly the same kind of responsibility which has been upon the Governor-General both under the Act of 1919 and also in the direction in which he has always been expected to administer his Office, and has administered it. He has always been responsible to interfere if there was grave menace to peace and tranquillity.

*Chairman*.] I suggest to the Committee and the Delegates that if this matter requires further elucidation, it may probably be dealt with during the discussions which are to follow the evidence given by the Secretary of State.

*Sir Tej Bahadur Sapru*.

6458. Very well. I will pass on to other clauses. Will you kindly look at clauses (b) and (c) ? There you have the words : " legitimate interest of the minority and legitimate interest of the Services ". Do you mean by the words " legitimate interest " anything more than those interests which have been guaranteed to them by the Constitution ?—In the case of the minorities, I think you must use a general term ; I do not see how you can very well specify it more definitely. In the case of the Services, we can come in greater detail to that later, but we do feel that there is something necessary over and above the written words in rules and contracts. The other case that we have in mind is the case of a hostile Government, that

without actually breaking any of the rules, yet makes it quite impossible, in one way or another, for the Services to carry out their duties.

6459. Now will you kindly turn to clauses 92 and 93. Clauses 92 and 93 provide a special procedure, which are to be known as Governor's Acts?—Yes.

6460. I take it that under these two clauses, 92 and 93, when the Governor decides to have a Governor's Act passed, he must first go to the Legislative Assembly. I draw attention to the words that he "will be empowered at his discretion". I do not understand them to mean in the context that the Governor may dispense with the necessity of going to the Legislative Assembly and off-hand pass an Act of his own; that is to say, if he desires to have an Act like that passed, then he must follow a certain procedure?—The two kinds of Governor's action that we contemplated here was, one, by Ordinance to meet situations of a transitory character, and, two, more permanent Acts to meet a more permanent situation. In the case of the Ordinances, he would be entitled to act how he wishes; in the case of a Governor's Act, I assume that he would go to the Council, in the first instance.

Sir Tej Bahadur Sapru.] That is how I interpret it.

Marquess of Reading.] He must.

Sir Tej Bahadur Sapru.

6461. Yes. Do you think that this provision is likely to interfere with the responsibility of the Ministers and with the loyalty of the Legislature to the Ministers or to their Party Leaders?—It seems to me to be inherent in any system in which the Governor's powers are to be effective of the purposes, namely, that he should be able to carry them into effect by a temporary measure like an ordinance or by a more permanent measure like an Act.

6462. If you are giving the Governor the power to pass ordinances, why cannot you give the Governor the power to pass his special Acts, if he may take his courage in his own hand and pass an Act, instead of blurring his responsibility with that of the Ministers?—This is a question that Sir Tej raises again this

morning upon which we have had a good deal of previous discussion, and it is a question, I think, in which there is certainly justification for differences of opinion. Sir Tej has taken the view that the Governor's action of this kind should not only be distinct from ordinary legislative action, but should appear to be distinct.

6463. Yes?—Sir Tej is afraid that if this action of the Governor appears as the act of the Legislature, the responsibility of the Legislature will be blurred and, possibly, the responsibility of the Executive, and the general position of the Chamber and the Legislative organs in the Provinces will be undermined. That is one point of view. The other point of view is that it is worth while giving the Governor the opportunity to carry the Legislature with him, and it is worth risking something of this danger of blurring responsibility in order that, if possible, the Governor should carry the Legislature with him. On that account, we, taking that view, have made proposals under which it is possible for the Governor to carry the Legislature with him by introducing an Act of this kind, and, if possible, getting the support of the Legislature. If, of course, he fails to get that support, he must have power to enact the legislation himself; but it is really an issue for the Committee to consider between the danger that Sir Tej foresees of blurring responsibility, and the advantage that we see in our proposals of giving the Governor an opportunity of trying to take the Legislature with him.

Archbishop of Canterbury.

6464. One word, Secretary of State. Contemplating the case when the Governor has approached the Legislature and hopes to carry it with him for some special Bill and he fails, is not any action that he then takes prejudiced because he has openly failed to carry the Legislature with him?—No, his powers are in no way infringed.

6465. His powers will not be, but his position will be very much the worse if he has formally approached the Legislature and the Legislature has refused to give him any sanction. Would it not be

better for him that he should take the responsibility from the first in his own hands?—It is, as I say, a question to which there is no perfect answer. Upon the whole, I take the view that it is better that the Governor should try to take the Legislature with him.

Marquess of *Salisbury*.] Might I put a question just on the mechanical difficulty of how it is going to work, if Sir Tej will allow me for a moment?

Sir *Tej Bahadur Sapru*.] Certainly, my Lord.

Marquess of *Salisbury*.

6466. *Ex hypothesi*, the Governor is not working with his Ministers, because, otherwise the simpler plan would be for the Ministers to introduce the Bill, so *ex hypothesi*, he is not working with his Ministers. Then who is going to introduce the Bill and who is going to defend it and explain it in the Legislature?—He sends a message. The governor is entitled to send a message to the Legislature asking for legislation.

Sir *Austen Chamberlain*.

6467. 92 (b) deals with the Message; under 92 (a) he presents or causes to be presented, a Bill with a message. Then how is the Bill to be contained in the message?—Yes.

Marquess of *Salisbury*.

6468. No one knows better than the Secretary of State that you do not merely send a Bill and lay it on the Table; somebody must be there to explain and defend its provisions, and so on. Who is going to do all that under those circumstances?—The Governor would have to find somebody who would take the responsibility of introducing it. If he could not find anybody, obviously, *cadit questio*, he would have to act *motu proprio*, on his own initiative.

Sir *Tej Bahadur Sapru*.

6469. Pursuing that very line, because I was coming to it, the Prime Minister or the Governor is definitely opposed to the policy of the Governor's Conference upon a proposed Bill. The Governor then approaches the Leader of the

Opposition who wants to turn out the Prime Minister of the day, and the Leader of the Opposition says: "Yes, I am ready to pilot your Bill". That would introduce an element of great demoralisation in the whole Government and in the whole Council. The Governor has got no official representative of his who will fight for that Bill. The Leader of the Opposition will simply turn out the Minister of the day and say: "Yes, I am willing to oblige you, and incidentally, to put myself in the line of the Prime Minister". It introduces an element of great demoralisation in whole Council?—My Lord Chairman, I have never regarded a question of this kind as a question of principle. It is really one of those questions in which every justifiable criticism can be made against either course. Upon the whole, I have thought it was better to give the Governor this chance to carry the Legislature with him. None the less, I am quite conscious of the kind of difficulties that Sir Tej has suggested, and it is a case of weighing up the objections to each of these two courses.

Lord *Irwin*.

6470. May I ask the Secretary of State one question?—Is it not the case that those who considered this plan before it was concluded in the White Paper, were conscious of all these difficulties, but were anxious, if possible, to devise some machinery by which the general public opinion might be taken into greater account than is possible in the case of ordinances. I am sure Lord Reading, and I myself, certainly, could quote cases in which we found great inconvenience in an analogous situation in which, having made a Bill the subject of a recommendation to the Assembly, it was not thereafter possible to take any account of any suggestions for a compromise made by the popular element in the Assembly, without tearing the whole thing up and beginning again at the beginning, for which there was very often not time. This plan, which I am quite sure the Secretary of State is fully conscious of the difficulties of, was devised with a view of trying to get public opinion and the view of the Governor



and the Governor-General, as the case may be, together?—Lord Irwin has expressed very exactly the views that did lead us both in the Round Table Conference and subsequently to make this proposal. It was exactly with that object in mind that we made these proposals.

*Sir Tej Bahadur Sapru.*

6471. Sir Samuel, may I put it to you like this: There is the danger at the commencement of this procedure contemplated by section 92 of undermining the authority of the Government of the day and bringing it into conflict with its own Legislature. On the other hand, there is the danger of the Governor's authority being undermined if the Legislature refuses to listen to his advice and to pass that Act; and the third point is, that any machinery that you may devise for a Bill like that to go through, it is bound to be imperfect in the absence of an official bloc. Now taking these three points into consideration, would you please tell us whether you would take the matter further into consideration. I do not want anything more than that?—I think, certainly in a question of this kind in which I have said at the very beginning it is just the kind of question upon which there are legitimate differences of opinion, obviously we must take into account the very strong objections that Sir Tej has made, and that were re-echoed, to some extent, by His Grace the Archbishop of Canterbury, but I would ask Sir Tej at the same time to consider the other side of it, too.

*Sir Tej Bahadur Sapru.*] I have been considering it.

*Sir Austen Chamberlain.*] May I just say before you leave that subject, I see the advantage of the Governor carrying the Legislature with him, if he can, but I cannot see that you have provided any machinery by which he could carry the Legislature with him. That is really the point of the Noble Marquess who sits next to me.

*Archbishop of Canterbury.*] Might I, with great diffidence and with respect, ask the Secretary of State, in view of this discussion this morning, to ask

whether, having regard to the other safeguards, and having regard to all these difficulties which are mentioned to-day, 92 (a) is really necessary—I see a special point in 92 (b)—but whether 92 (a) is really necessary. I think if he could tell us later on his considered judgment in that matter, it would be very helpful to us all.

*Lord Eustace Percy.*] In considering that, I hope the Secretary of State will also consider that the mere presentation of a message, even if the Bill goes no further, might be very useful to the Assembly, supposing the Governor was contemplating a dissolution on the issue.

*Sir Austen Chamberlain.*] But he is not obliged to send a Bill in order to find an opportunity of sending a message.

*Lord Eustace Percy.*] But whether any special provision is necessary to enable him to put the message in the concrete terms of a Bill, is a matter for consideration.

*Sir Tej Bahadur Sapru.*] Now may I ask you to consider this further point in this connection: Supposing the Governor's Act has been passed under the procedure contemplated by Clauses 92 and 93, and a few months later the Legislature wants to repeal that Act, would it be open to the Legislature to do so, and, if so, subject to what conditions? Who could repeal it?

*Marquess of Salisbury.*] The Governor could stop it, I suppose.

*Witness.*] It would be a question really whether it was a Governor's Act or whether it was an Act of the Council. Supposing the Governor introduced it as a Governor's Act and in the course of the discussions it was found that it had the support of a majority in the Council, it would then become an Act of the Council, and, as such, would be just like any other Act. If, on the other hand, it remained a Governor's Act, and the Legislature subsequently passed an amending or repealing Act, then the amending Act would have no validity against the Governor's Act.

6472. But do you deny that it is open to the Legislature to pass an amending Act amending the Governor's Act?—If you recognize that, then I would submit

that it might introduce the element of deadlock between the Governor and the Legislature?—A Bill of that kind could only be introduced with the previous sanction of the Governor.

6473. Is there anything to that effect in the White Paper?—Yes; Proposals 119 and 120.

Lord *Rankeillour*.] He could also stop an amending Act under 94.

[*Sir Tej Bahadur Sapru*.

6473A. I suggest that has nothing to do with this, if you will look into it. I think there is an omission?—I think No. 120 covers it.

6474. But the consent to the introduction has nothing to do with it?—(*Sir Malcolm Hailey*.) "The introduction in a Provincial Legislature of legislation on these latter subjects will require the consent of the Governor of the Province given in his discretion". That is the last sentence of No. 120.

*Marquess of Reading*.] That is the same as you have had hitherto.

*Sir Tej Bahadur Sapru*.

6475. Does it cover Nos. 92 and 93?—(*Sir Samuel Hoare*.) I am informed it is covered. It was intended to cover it.

*Marquess of Reading*.] Does not it stand in the same position of principle as an ordinance, just in the same way?—I think, apart from details of this kind, the main question is whether the Governor should have these powers or should not. As I say, I incline there to one view, but I quite realize there are these differences of opinion. We had better, in view of the differences of opinion that have been expressed, look at the question again.

*Sir Tej Bahadur Sapru*.

6475A. I will not trouble you any further with regard to that. With regard to No. 103, I have only one question to ask: Ordinances to be passed under No. 103 relate strictly to matters coming under the Governor's special responsibilities?—Yes.

6476. Could not the Governor easily obtain the emergency ordinances from the Governor-General?—This again is

one of the questions that we have considered at some length in the past, namely, whether it is necessary for the Provincial Governor to have an ordinance-making power in addition to the ordinance-making power of the Governor-General. We have taken the view that, as a consequence of the introduction of Provincial Autonomy, the transference of Law and Order to the field of Provincial subjects, the Provincial Governors should have these powers. It is again one of those questions upon which differences of opinion have been expressed, but we do definitely take the view that with Law and Order a Provincial subject, the Provincial Governor ought to have this ordinance-making power, always, of course, remembering that ultimately he is responsible to the Governor-General and ultimately to the Secretary of State and to Parliament.

6477. Assuming Provincial autonomy, such as it is, the ultimate responsibility for the maintenance of Law and Order remains with the Governor-General. He has the control of the Army?—That is so.

6478. Therefore, the integrity of Provincial autonomy would not be affected if you were to confine this power of ordinance-making to the Governor-General, which would be decided in a few hours by the Governor-General at the instance of the Governor?—I have always taken the view that it is more in conformity with at any rate my conception of Provincial autonomy that the Provincial Governors should have these powers.

*Mr. M. R. Jayaker*.

6479. May I put one question to clear this matter up?—Yes, please.

6480. I find that the scheme of the White Paper is that when the Governor acts in the field of special responsibility he is subject to the general supervision and control of the Governor-General?—Yes.

6481. Is it the case that when a Governor passes an ordinance under paragraph 103, operative in his own Province, has the Governor-General power to interfere with that ordinance?

—Yes; I should say the Governor-General could stop the Governor from issuing the ordinance, but what I imagine would happen would be this: I can imagine that in situations of great gravity the Governor-General would take a very close part in what was happening within the field of a Provincial Governor's special responsibilities in a particular Province. But I can also imagine that normally there would grow up a convention between the Governor-General and the Governor under which it would be understood that the Governor would act upon his own initiative within that convention. That is the kind of way in which I see the thing happening in practice.

Archbishop of *Canterbury*.

6482. May I put this point, following up what Mr. Jayaker has said (the Secretary of State will know): It seems to me very desirable that there should be some reference to the Governor-General before the Governor of a Province takes the very grave responsibility of issuing an ordinance of this kind. It might very conceivably provoke a good deal of difficulty in the Province with regard to which the Governor-General might ultimately, having regard to his position and ultimate force, be obliged to intervene, and yet he himself never be consulted about it beforehand. What I want to know is, whether it is possible to insert in No. 103—"after consultation with the Governor-General"—I think that would be a mistake. I think one must here again allow an element of latitude. In the case of a grave situation, I cannot believe that the Governor-General would not be fully informed of what was happening and would not make his voice and, if necessary, his decision, heard. But, as I said just now, I think there may be other cases within a working convention that may require urgent treatment in which it would be better for the Governor to act at once on his own initiative. After all, those of us who are anxious to make Provincial autonomy as effective as possible do attach some importance to making it appear to be the Governor in the Province who is acting, even though the Governor-General constitutionally may be

behind him. I believe myself that there is a good deal to be said in favour of a course of action that does give the Governor this power and does make it appear in the Province that it is he who is acting.

Earl *Peel*.

6183. You draw a distinction between the first ordinance and the renewal of the ordinance. You suggest that a convention should grow up anyhow as giving some independence to a Governor as enacting the ordinance, but as regards the renewal of it, it seems to me a different situation arises. That is far more serious, and if that is to be done it has to be put before Parliament and if it were to be put before Parliament it would go through the Governor-General and in that case the Governor-General ought to have more authority, or exercise his authority more in the renewal case than in the primary case, ought he not? Of course, it would be more important if it had to be renewed. You would draw a distinction, therefore, between the convention in the first case and in the renewal case?—I should imagine that both situations would be covered by a convention. I cannot imagine for a moment that in the case of a renewal of ordinances in which Parliament has to give its sanction, the Governor-General would not be playing a very important part. After all, the case for the renewal of the ordinances would have to come through the Governor-General as Lord Peel has just suggested.

Sir *Austen Chamberlain*.] Mr. Secretary of State, the Governor has a geographically defined responsibility?—Yes.

6484. He must think of his Province?—Yes.

6485. And his responsibility is for his Province; but the introduction of an ordinance in a Province might affect the general condition throughout British India?—Yes, that is certainly so.

6486. I think if it were useful (only it would not be useful) I could find in my memory cases where a Governor would have wished to act in respect of his particular Province but was restrained from doing so for a time at any rate by the Governor-General in the larger interests of India as a whole. Ought not that case to be provided for not merely by a

convention but by some definite reference to the Governor-General?—It certainly is provided for. The Governor-General has full powers to give what directions he thinks fit to the Provincial Governors.

*Archbishop of Canterbury.*

6487. Yes, but in the case in point the Provincial Governor who has to act in an emergency is under no obligation to let the Governor-General know what he is doing?—I am assuming that each of them knows fully what the other is doing.

*Marquess of Reading.*

6488. Secretary of State, it has happened again and again, and Lord Irwin certainly will have had experience of it, that applications have been made by a Governor to the Governor-General under the present system where the Governor has no power of issuing ordinances, to issue an ordinance when the Governor-General has taken the view that the time had not arrived, and would not grant it. I have had such cases time and again and I am sure Lord Irwin has. It has happened to me. May I put to the Secretary of State for consideration—after all, it is a very difficult matter—is not it desirable that it should be made quite clear that the Governor should never issue an ordinance without having consulted the Governor-General. A convention growing up may lead to all kinds of difficulties. What I suggest to the Secretary of State is that, as he has pointed out to us, the Governor-General is ultimately responsible for all India, and he has to take everything into account. The Governor has only to deal with his Province, and it would lead to a very difficult situation. What I am suggesting is that you might possibly have difficulties arising between the Governor and the Governor-General if the Governor issued an ordinance without having consulted the Governor-General and having had his assent, because he is under the supervision, direction, and control of the Governor-General. Therefore, what I do suggest to Sir Samuel for his consideration is as to whether it should not be prescribed in this way, that it would be after consultation with the Governor-General. Whatever form it is I do not mind, but the important thing is that you should

avoid getting into a possible conflict. The Governor pressed with the position in the Province, the Governor-General having the ultimate responsibility and seeing what the position is in all India, you should make quite clear at the first that there should not arise a conflict between the Governor and the Governor-General on this point. Would you consider that, Secretary of State?—I am quite ready to consider the suggestions that have been made, always keeping in mind my desire to make Provincial autonomy as effective as possible. I think, speaking offhand, it might be possible to meet the views of some of the Members of the Committee in the instructions to the Provincial Governors, but, be that as it may, I am quite ready to look into the question again, in view of the discussion, and to see whether we can reconcile the two points of view.

*Sir Tej Bahadur Sapru.*] Pursuing this matter a little further, if you are to agree to the Governor obtaining the previous consent of the Governor-General before he issues an ordinance, why not leave the matter entirely in the hands of the Governor-General who may provide by his Indian ordinance for a grave situation travelling to neighbouring Provinces? It is conceivable that the Governor of the United Provinces may take one view and the Governor of Bihar may take another view.

*Mr. Zafrulla Khan.*] That is surely provided for already; that surely would be possible.

*Sir Tej Bahadur Sapru.*

6489. In a case like that the Governor-General will be the sole authority to provide for the entire situation in the two Provinces?—As Sir Tej knows, we have had a lot of discussion about this and there was a very strong view expressed at the last Round Table Conference in favour of the Provincial Governor having these powers, assuming that there was an ordinance-making power at all.

6490. Not by me?—No, I would not say that at all. Sir Tej has always been perfectly consistent in his view.

6491. I will pass to the next Proposal—No. 104. As regards No. 104, would you kindly tell us whether the procedure laid down in that paragraph is supposed to correspond as nearly as possible to the

English procedure of Order in Council and, if so, will you kindly explain that? I am only wanting information on that particular point?—Speaking generally and without tying myself down to details, my answer would be Yes. We have an Act of Parliament which I think is called the Emergency Powers Act.

6492. Yes, I know it?—Under which it is possible for a Cabinet to advise the issue of Orders in Council, with the proviso that those Orders in Council have to be sanctioned by Parliament within a given time.

6493. That is all I wanted to know in regard to that?—Yes.

6494. There was one question that I would like to put to Sir Malcolm Hailey. That is only that I am anxious that the position with regard to that should be clearly explained to the Committee. That is with regard to the judicial system. Take, for instance, the United Provinces, of which Sir Malcolm Hailey is Governor, and with which he is quite familiar: So far as the civil side of the administration is concerned, will you kindly tell the Committee what exactly is the measure of control which the High Court exercises over the civil administration of justice?—(Sir Malcolm Hailey.) Sir Tej, no doubt, is not referring strictly to judicial control as contained in the Codes, but purely to administrative control.

6495. Administrative control?—The High Court recommends to the Local Government the appointments of the superior civil judicial officers. With regard to the recruitment of the inferior judicial officers, the High Court also makes its recommendations to the Local Government and those recommendations are practically invariably accepted by it.

6496. Is it or is it not a fact, Sir Malcolm, that so far as the lowest grade in the United Provinces and in every other Provinces is concerned, whom we call Munsifs, they are recommended solely by the High Court?—Solely.

6497. And upon their satisfying such tests as the High Court has prescribed?—That is the case in the United Provinces. In some Provinces the lowest grade of Civil Judges is actually appointed under local legislature by the High Court itself. It is the High Court, therefore, which lays down in effect the qualifications required for recruitment to the judiciary,

just as the High Court in itself controls the qualifications of advocates and legal representatives. The High Court recommends to the Local Government the transfers and postings of the higher officers of the Civil Judiciary.

6498. Including the District Judges?—Including the District Judges, and itself posts, transfers and gives leave to the lower Civil Judiciary, that is to say, the subordinate judges and the Munsifs.

6499. Has that system, to your knowledge, worked well, on the whole?—Yes, it has worked so well that where the nominal power of recruitment and the like rests with the Local Government which acts on the recommendation of the High Court, I have recommended that we should have a convention that the Local Government should invariably and without any question accept the opinion of the High Court, so that it practically amounts to complete control of the High Court. We consider that those are matters which are really best left in the hands of the High Court.

*Chairman.*] May I remind you that the arrangement is that the Judicature, Federal, High and Supreme Courts, should be dealt with after Federation? When you opened with this question I imagined you were about to relate it in some special way to the matter of the Provinces which is that before the Committee and Delegates at this moment.

*Sir Tej Bahadur Sapru.*

6500. There are two more questions I can put and then I can conclude my examination. With regard to the Ministerial side Sir Malcolm, you will agree that the Chief Justice has got the power to appoint the Ministerial staff of the High Court under the Statute as well as under the Letters Patent?—Under the Letters Patent.

*Marquess of Reading.*] Does not the whole of this question arise under the judicature? I only suggest it because it is opening up exactly the point which we shall have to go into.

*Sir Tej Bahadur Sapru.*] Very well, That is all that I want to put to you.

*Sir H. Gidney.*

6501. Secretary of State, in your reply to Lord Salisbury on page 3 of the Evidence of the 11th day—the questions are

5623 and 5627—you stated that the Cabinet would be formed from those persons who command the largest following. Further on, you said the Government has got to consider minorities. In answer to Question 5627, you elaborated the points and said: "I mean minorities as we always define them in dealing with Indian affairs, namely, the principal religious minorities." Could you tell me what you mean by the principal religious minorities?—I think Sir Henry Gidney knows as well as I do what I mean. I mean the minorities in the sense in which we have always discussed them at all the discussions at the Round Table Conferences.

6502. Have we ever discussed them from a religious point of view?—It may be that "religious minorities" was not a very carefully selected epithet; what I mean is the minorities in the sense we have always discussed them.

6503. In reply to Sir Austen Chamberlain, which Sir Malcolm Hailey elaborated, he said that the Governors of the Presidencies should have an officer of the rank of a Counsellor, or that he should be of the status of a Counsellor. Would not that be introducing the appointment of a non-elected Minister, in a way?—(Sir *Malcolm Hailey*.) No, Sir; he is a personal officer attached to the Governor.

6504. What would be his duties?—I am afraid that I could only say that his duties would be partly those now taken by a Private Secretary, but also, on a somewhat larger scale, those that will arise owing to the exercise of the individual powers of the Governor. He would be in charge of the Governor's Secretariat, and he would be the informal representative of the Governor in discussions with visitors and on occasions, no doubt, with Ministers.

6505. In reply to Major Cadogan, Secretary of State, you differentiated in respect of the North-Western Frontier tribal areas. Could you tell the Committee whether the tribal area is better than the other part of the North-West Frontier?—(Sir *Samuel Hoare*.) That is a geographical question; I should have thought anybody could have found the answer by looking at the map. I could not say off-hand.

6506. I ask that question because in that Province you have practically ad-

mitted the introduction of a dual office to be held by the Governor, namely, that of a Governor and as Agent to the Governor-General. If you can introduce it in the North-West Frontier so far as peace and tranquillity is concerned, would it not be as easily introduced into Bengal, so far as the Terrorist and the other movements are concerned?—I do not myself see any relation whatever between the two. I have always assumed at every discussion we have had that there was a unanimous feeling amongst everybody in every Conference that the tribal tracts were in special relation to the rest of the Provinces, and the North-West Frontier Province, and that special treatment had to be applied to them.

6507. Would that not equally apply to the Terrorists in Bengal?—I have just given the answer; in my view, not at all.

*Sir Austen Chamberlain.*

6508. Before you leave that point, may I put one question to the Secretary of State. Did you mean by your last answer to exclude consideration of any special arrangement in respect of Terrorists or subversive movements?—Not at all. My answer was directed to the question of Sir Henry Gidney, that seemed to imply that there was some similarity between Bengal, in which there is no geographical distinction between one class of people and another, and the tribal tracts in which there is a definite distinction between the people living in the tribal tracts and the people living in the other districts.

*Sir Henry Gidney.*

6509. On page 37 of the White Paper Introduction, paragraph 75, regarding fundamental rights, in which you say that there are serious objections to giving a statutory expression to any large range of declarations, and then continue it by saying that some of these fundamental rights might find place in a pronouncement by the Sovereign, will that carry with it a statutory position?—No. It is just because of that that I said that certain of these rights that are not susceptible of judicial decision, can, so far as I can see, if they are to find

expression anywhere, only find expression in that kind of channel.

6510. Arising out of the discussion that Sir Tej introduced, and the great difficulties that you yourself admitted which a Governor will be faced with in certain contingencies, do you, or do you not, think that, complicated as these issues are, and difficult as it will be for the Governor to exercise the special responsibilities without raising a storm of opposition, this is likely to whittle the value of the operation of the safeguards of the minorities, for instance?—I do not understand the question entirely.

6511. I think, Secretary of State, that in your mind you show that there would be a great deal of difficulty that the Governor would have to face if he decided in certain matters against the wish of his Minister. I take it that the protection of the minorities would be one of the matters most closely connected with the administration of the Governor, so far as the Minister is concerned. Do you not think that if he did want to operate his own view in a certain line for a minority, and it was against the wishes of the Minister, that would render his position a little difficult, if he forced the operation of that?—What would be Sir Henry Gidney's alternative? That there should be no protection of the minorities at all?

6512. No. I want to carry it a little further than that. If in that case the Governor found that he could not interfere, would it be possible to allow an appeal to the Governor-General?—An appeal from whom?

6513. From the community or the interests concerned?—There is not anything to stop them sending a Memorial to the Governor-General.

Mr. N. M. Joshi.

6514 Mr. Secretary of State, I want to ask a question about the special responsibility of the Governor as regards the protection of the rights of any Indian State. I want to ask you whether you consider it to be necessary that the interests of British Provinces should be similarly protected against any action that may take place in an Indian State, and how do you propose to do that?—I was just trying to contemplate the kind of case Mr. Joshi had in mind.

6515. May I remind you?—The Governor-General would act under his paramountcy powers?

6516. Last time when you spoke on this question of the protection of the rights of the Indian States, you gave an instance, namely, certain bodies of men may like to enter an Indian State for some political agitation, and you said in that case the Governor would have a right?—I know, and the answer I have just given is the answer that covers that case, the reciprocal case, namely, that the Viceroy would intervene under his paramountcy powers.

6517. So the paramountcy powers will cover an incident of this kind?—Yes.

6518. My next question is as regards paragraph 79: "A member of a Provincial Legislative Assembly will be required to be at least 25 years' of age and a British subject or a subject of an Indian State." Does this paragraph give a right to any British subject or a subject of an Indian State to be a candidate for the membership of a Provincial Legislature?—Yes.

6519. May I ask you whether you would on the ground of reciprocity also see that any British-Indian subject would get the right to be a candidate for any Legislature that may exist in any Indian State, and how do you propose to do that?—I do not propose to do it.

6520. May I ask you why?—Because we have always assumed in all the discussions we have that we do not intend to interfere in the internal Government or administration of the Indian States.

6521. May I ask you then whether this right which you are giving to the subjects of the Indian States is only a one-sided right?—Mr. Joshi can put what comment he likes upon it.

6522. May I ask you another question on the same point? As this clause gives the right to any British subject, including British subjects domiciled in the Dominions, such as South Africa, when a South African will get a right to become a candidate for the membership of an Indian Legislature when Indians in South Africa will not get that right, do you propose that the Indian Legislature may have some right to qualify this right of the British subjects in such cases?—I would not imagine that a

South African candidate would have very much chance of election under those conditions.

6523. A South African candidate may have a chance of election by a European constituency?—The right is surely with the electors. If they wish to elect him, that is their affair. I should have thought it was very unlikely.

6524. Now, as regards the Provincial Upper Chambers, may I ask you how you visualise the representation of labour in the Provincial Upper Chambers?—Had we not better take that question up with the Franchise questions?

6525. Very well. May I ask you a question on the Provincial list of subjects on page 118? Item 69 is Health Insurance and Invalid and Old-Age Pensions. May I ask you why this item of Health Insurance and Invalid and Old-Age Pensions is made purely Provincial, when the other items, Welfare of Labour, are made concurrent jurisdiction? In the third list, on page 119, you will find Welfare of Labour and other matters connected with Labour Legislation are made matters of concurrent jurisdiction. May I ask you why you have made Health Insurance and Invalid and Old-Age Pensions, these two items, only Provincial jurisdiction?—This list is the result of very long discussions both at the Round Table Conferences and particularly at the last Round Table Conference, and since then as a result of a great deal of correspondence which we have had with the Government of India. I do not even now say that it is final or that it should not be amended in one direction or another, but I think it is very difficult in a discussion of this kind about the Constitutional powers of the Provinces to go in detail into one particular item in a list of this kind. Mr. Joshi must believe me when I say it is essentially a question for the Constitutional and legal experts. I think myself that we had either much better have a specific discussion upon the list, or, what would be much better, would be if Members of the Committee and Indian Delegates who are interested in the list as a whole, or in particular items in the list, would have a talk with the Constitutional expert here about it.

6526. And if I get an opportunity of talking to the Members of the Committee

and the Constitutional experts, I shall be quite satisfied. Then I want to ask you one question: In reply to Sir Abdur Rahim, you stated that the Governor will have discretion to allow or not to allow discussion of matters in which he takes action on his own special responsibility?—Which question are you referring to, Mr. Joshi?

6527. On the last page of your First Day's Evidence. On page 676 the question was asked and your reply is on page 677?—Yes.

6528. The question which I want to ask you is this: In view of the fact that the Governors are given these very wide special powers, do you not think that the smallest protection which the people will have against the arbitrary use of such powers is free discussion of the Acts of the Governor, and, therefore, in this matter the discussion should not be left to the Governor?—No. I gave my answer three days ago. I am not prepared to alter it.

6529. May I ask you one question: Whether you would be prepared to give a list to this Committee of the use of the powers by the Governor-General and by the Governors of Provinces in disallowing free discussion either by preventing legislation being brought before the Legislatures, by disallowing Resolutions, by disallowing adjournment motions, since the new Constitution was brought into existence?—I think it would be quite impossible to make such a list, and the whole object of almost everything I have said to-day, and two days ago was meant to imply that it was quite impossible to specify all the conceivable conditions in which a Governor might have to intervene. That does not mean that the Governor is constantly going to intervene, but it does mean that it is quite impossible to specify the exact occasions.

6530. Do not you think the Joint Select Committee will get an opportunity to know what use has been made so far of the powers which the Governor-General and the Governors possess?—I should have thought that is a matter of history.

6531. If it is a matter of history do not you think we should learn something from history?—That is a very wide question.



Lord Irwin.

6532. Is all that information not available to Mr. Joshi, Mr. Secretary of State?—I should think so, certainly.

Mr. N. M. Joshi.] The information is not only available to me, but I have some experience as a Member of the Legislature for the past 12 years, and, after having got that experience, I am asking whether such a power should be given.

Chairman.] Would you put your next question, Mr. Joshi?

Mr. N. M. Joshi.] I have no more questions.

Dr. B. R. Ambedkar.

6533. I want to know whether the Secretary of State desires me to reserve any questions upon Second Chambers for the Provinces?—I would suggest, so far as the Constitution of the Second Chambers goes (the membership), perhaps it would be better to take that with the franchise generally.

6534. This franchise question ought to be excluded at this stage?—Whatever the Committee thinks, I should have thought it came better into the franchise.

Dr. B. R. Ambedkar.] I will not ask any questions of the Secretary of State.

Chairman.] I think the Secretary of State's suggestion is a practical one. I hope you will not put questions at this stage.

Dr. B. R. Ambedkar.

6535. I was going to ask the composition of the Second Chamber. Would it be better to reserve it?—Yes, I think perhaps that would be better.

6536. You said in the course of a reply to a question put last time, that you contemplated that in the Provinces the Ministers could be drawn from either Chamber, both the Lower and the Upper?—Yes.

6537. You remember that in the Second Chambers, as suggested in the White Paper, there are to be 10 nominated Members?—Yes.

6538. Is it the proposal that these 10 nominated Members who will sit in the Upper Chamber will also be eligible for being Ministers?—Yes, I would not draw any distinction between them and the others.

6539. The nominated Members would be eligible for being Ministers?—Yes, certainly; that is how I conceive it to be.

6540. In the present Government of India Act there is a distinct provision that any member who is a nominated member of the Provincial Legislature is not eligible for being a Minister?—I take it from Dr. Ambedkar that is so.

6541. I stand subject to correction, but I believe that is the position?—Yes.

6512. So you are really introducing the very important change by allowing nominated members in the Upper Chambers to be Ministers in the new Government?—It is, of course, a very different kind of Government.

6543. I am not going into the reasons, but I am only stating the facts?—Yes. I think there is a great deal to be said for giving the Governor a free choice, always assuming, Dr. Ambedkar, that the Cabinet is collectively responsible, and there would be no intention of imposing a Minister against the wish of the Cabinet in a case of this kind.

Dr. B. R. Ambedkar.] That would lead me to ask a question with regard to the composition—

Mr. Zafrulla Khan.

6544. If Dr. Ambedkar will forgive me, perhaps the Secretary of State means against the wish of the person commanding the largest influence, but the Cabinet will not be composed until everybody is in it. That would be the nominated and the elected portion also? I am assuming that the responsible Government, whether you call it the Cabinet, or whether you take the Prime Minister as the exponent of its views, desires to have a Minister of this kind, and amongst the nominated members of the Second Chamber such a Minister is forthcoming, and he is then appointed to be a Minister just like the other Ministers.

6545. So you visualise that the Governor sends for the person who commands, in his opinion, the largest support in the Legislature (I will not say the Chamber because we are discussing the case of two Chambers) and proceeds in consultation with him to select the Ministers, and when that process is more or less complete then this Cabinet express a desire to the Governor to have

included among them somebody from among the nominated members. That would be more or less the process?—I would not restrict the situation to that position.

*Sir Austen Chamberlain.*

6546. If it were the case (a very unlikely one perhaps, but a possible one) that one of the nominated members was the person most likely to command a majority, you would begin with him?—You would begin with him.

6547. In fact, you would draw no distinction between him and any other member of either of the Houses?—That is so.

*Mr. Rangaswami Iyenger.*

6548. If I may quote from the Federal Structure Sub-Committee's Report, page 16: "The Governor-General's Instrument of Instructions will then direct him to appoint as his Ministers those persons who command the confidence of the Legislature, and the Governor-General, in complying with this direction, will, of course, follow the convention firmly established in constitutional practice throughout the British Commonwealth of inviting one Minister to form a Government and requesting him to submit a list of his proposed colleagues". That was the position when we discussed it in the Round Table Conference?—I think I made my own views clear yesterday and the day before, as to my views of collective responsibility in the Governments.

*Sir Tej Bahadur Sapru.*

6549. Is Sir Samuel right in conceding that the present Government of India Act makes a distinction between elected and nominated members for appointment as Ministers?—It was new to me, but I took it from Dr. Ambedkar.

*Dr. B. R. Ambedkar.]* I used it in the sense that it must be an elected member within six months.

*Sir Tej Bahadur Sapru.]* So far as I can see the Government of India Act makes no distinction between elected and nominated members for the purpose of appointment as Ministers. The Section which deals with that matter is Section 52.

*Dr. B. R. Ambedkar.]* He has to get himself elected.

*Sir Tej Bahadur Sapru.*

6550. I thought Dr. Ambedkar put it to Sir Samuel, and suggested that the Government of India Act makes a distinction between elected and nominated members in the matter of being Ministers?—(Sir Malcolm Hailey.) It only does so to the extent of laying down that a Minister shall not hold office for a longer period than six months unless he becomes an elected member.

6551. But if there is a nominated member there already, there is nothing to prevent you from appointing him Minister?—That is so.

6552. And that has been done?—Yes.

*Sir Tej Bahadur Sapru.]* The law, as I understand it, is this: It is open to the Governor to appoint any outsider a Minister, provided that outsider gets elected to the Legislative Council within a period of six months. Similarly, it is open to the Governor to appoint a Minister from the block of nominated members who are already there. The Act does not make any distinction.

*Mr. Zafrulla Khan.*

6553. Once a nominated member is appointed, does he continue to be a nominated member all the time, or must he seek election?—(Sir Samuel Hoare.) No, I thought that was quite clear. A nominated member is treated just like anyone else.

*Dr. B. R. Ambedkar.]* He cannot continue to be a Minister after six months unless he gets elected.

*Sir Austen Chamberlain.*

6554. There is no question, is there, of seeking an election. The qualification is that he should be or become within six months a member of the Legislature?—That is it. (Sir Malcolm Hailey.) An elected member.

*Sir Hari Singh Gour.*

6555. He must be an elected member?—(Sir Samuel Hoare.) We are talking about two things, and this is not really one of the very important details.

*Sir Austen Chamberlain.*

6556. I want to make it quite clear that the Secretary of State understood my question, and that his answer was

directed to my question. I was not speaking myself of the present system, but of the new system contemplated by the White Paper, and my suggestion there is that the qualification for a Minister is that he should be or become within six months a member of the Legislature?—Yes, that is the proposal in the White Paper.

*Sir John Wardlaw-Milne.*

6557. May I ask a supplementary question on that? It is not clear to us what the Secretary of State's reply was to the procedure point outlined by Mr. Zafrulla Khan. He rather indicated that the procedure would be that this nominated member would only become a Member of the Cabinet if he was asked for by the Prime Minister or by the person who wished to form the Government. As I understand it, the Secretary of State says that that is not the case, that there is no question of his being specially asked for after the Cabinet is formed, but that he may in fact be proposed as a Member of the Cabinet from the very beginning?—He will be treated just like any other Member of one or other Chamber.

*Dr. B. R. Ambedkar.*

6558. May I read the section?—Does it really very much matter what the position is now?

6559. It matters because I want to ask what the exact position is. Section 52, sub-section 2 is: "No Minister shall hold office for a longer period than six months unless he is or becomes an elected Member of the Local Legislature." All I wanted to suggest was that the Act does not contemplate the continued holding of a nominated member as a Minister, which would be the case if the suggestion in the White Paper were adopted, that a nominated Member of the Second Chamber would be entitled to be a Minister. With respect to the appointment of the Ministry, I want to draw your attention to the recommendation of the sub-committee on Provincial Constitution. They said: "The Sub-Committee is of the opinion that in the discharge of that function the Governor should ordinarily summon the Member possessing the largest following in the Legislature and invite him to suggest the Ministers and submit their names

for approval." Paragraph 67 says that he shall make "his best endeavours to select his Ministers in the following manner"—which I regard as a considerable departure from the recommendation of the Provincial Constitution Committee?—I do not think there is any departure at all. The Committee said ordinarily, and this is, I imagine, what will ordinarily happen.

6560. You do not think it would be necessary, in the interests of fostering collective responsibility, to impose an obligation upon the Governor that he should follow a particular course in the formation of the Ministry?—The Round Table Committee that Dr. Ambedkar quotes did not think so.

6561. I thought that was the thing?—You have just read a quotation from them saying "ordinarily" they thought so.

6562. Or that they should do it—not "best endeavour"?—It is a question of words.

6563. The next question I want to ask is on the question of this ordinance power of the Ministers under Proposal 104. What I want to know is this: Why is it necessary to make a provision of this sort in the Constitution itself? Would not it be possible for a Ministry in a Provincial Legislature to have an Emergency Act passed by the Legislature itself similar, for instance, to that of 1920 in this country, and to derive its powers from the Acts passed by the Legislature? I am talking about No. 104: Would not it be possible for the Provincial Ministry to have an Act passed by the Provincial Legislature giving them the necessary powers to act in a specified emergency?—I should have thought this was essentially a power that every government must possess, namely, of taking emergency action when the Legislature is not sitting and particularly necessary in a country like India where there are great distances and where it may take some time to get the Legislature sitting.

6564. I suggest the Provincial Ministry can get an Act passed from the Provincial Legislature defying the emergencies in which they may be called upon to act, and the Legislature may give them the powers. Why is it necessary to make a provision of this sort in the Constitution itself?—Because I regard it as

an essential power that a Government should have, and as we are dealing with the whole field of the Constitution it is the kind of power that ought to be inserted in the Constitution Act.

*Dr. B. R. Ambedkar.*] It is a power that is intended to be given to a responsible Ministry and it is, in the nature of things, that the responsible Ministry should draw its powers, whether emergency or otherwise, from the Legislature to which it is responsible.

*Lord Eustace Percy.*] May I remind *Dr. Ambedkar* that the Act of 1920 in this country only regularized a power which Ministers frequently exercised in the past without legislation? It has always been the practice in this country, that, subject to a subsequent Parliamentary indemnity, a Ministry can issue an Emergency Order.

*Dr. B. R. Ambedkar.*] That is all I ask.

*Archbishop of Canterbury.*

6565. If I may just implement what *Dr. Ambedkar* said, in view of the quite special character of 104, it is not really a safeguard, but is a matter of the procedure of Parliament; is it necessary to use the word "ordinance" which has in other parts of the Constitution a somewhat different significance, and would it not be better to use the term "emergency order"?—I have more than once asked the advice of my Indian and British friends for a better word than "ordinance" for all these powers, whether under 104 or 103. If anybody could find a better word, we are not wedded to any particular word.

*Archbishop of Canterbury.*] Ordinance is such a special safeguard, that it seems a pity to introduce it in a paragraph for a proposal which deals with ordinary procedure?

*Chairman.*] Perhaps that is a matter we might resume in discussion.

*Archbishop of Canterbury.*] Yes.

*Sir Hubert Carr.*

6566. I wish to refer to Second Chambers again. In answer to question 5735, the Secretary of State gave three reasons which occurred to him with regard to the decision as to having Second Chambers in the Provinces over and above the question

of expense, and one was public opinion. I wanted to ask whether much consideration ought to be given to that in view of the fact that Second Chambers are considered to afford a valuable safeguard for minorities, and since minorities were not able to settle a safeguard for themselves and had to appeal to His Majesty's Government, and got a safeguard in the shape of a communal award, whether it is fair now in this valuable safeguard of Second Chambers to give much value to public opinion?—I think one has got to take both points of view into account, namely, the interests of minorities and also the general feeling in a Province, and one has got to weigh the one against the other. It is this weighing of the two that has led us to suggest that there should be three Second Chambers; but it is open to any Member of the Committee or any Delegate to say that we had not given too much attention to one side or other of the problem, or that we have either suggested too many or too few.

6567. May I suggest, in furtherance of that, that for instance, in the Punjab we are told that there is very strong public opinion against a Second Chamber, and yet the European community is given one representative in a House of 175 Members, which is to be the sole Chamber of that Province. Would the Secretary of State, perhaps, consider that if public opinion was considered sufficient to justify one Chamber there, anyhow the minority such as the European community should have at least three seats?—I am afraid *Sir Hubert Carr* now is getting dangerously near the Government's communal decision. The difficulty in the kind of case that he has just suggested in a Province in which, it may be, European interests are not so strong as they are in some of the other Provinces is to make it any better in the Second Chamber than it is in the First Chamber. After all, if one keeps to the general lines of the Government's communal decision, it is difficult to contemplate a situation in which the European representation would be substantially very much bigger in the Second Chamber than it is in the first.

6568. May I turn to another subject, and that is the question of Forests. I do not know whether there is any arrangement whereby some check could be kept on the Provincial control of

Forests. The danger that appears to me is that Forests is a Department where there is often a great deal of unpopularity with the public, because of the checks put on hill cultivation, forest cultivation and fuel, and it seems to me that unless there is some check on the Provincial control of the Forests, the Catchment Area of some rivers which affect another Province might be very seriously affected. I am desirous of knowing whether there is any Provision which I have not discovered for keeping some check on that condition?—Sir Hubert has in mind a situation in which the water supply of one Province is injured by the depletion of forests in another Province?—Is that it?

6569. That is it?—I think that is a point we must take into account. I am not clear off-hand whether it is covered in the White Paper, or not.

Sir *Hubert Carr.*] Might I just add, with regard not only to water supplies, but deforestation, has led to such ruinous floods lower down that it is a matter which might deserve your attention.

Marquess of *Salisbury.*

6570. Is there no Federal authority in cases of that kind under the White Paper?—I should like to look into the specific case again; I am not quite clear whether it is covered, or whether it is not.

Sir *A. P. Patro.*

6571. In regard to Proposal 69, it is an analogy with Section 49, paragraph 2, of the present Act. Under the present Act the Governor has the sole power of making rules for the transaction of business with the Ministers as well as with his Counsellors. Now, under the new scheme, it is provided that he will be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of particular business and the procedure to be observed in the conduct of that business, and of the transmission to himself of all such information as he may direct. Now this is intended to bring the Ministers and the Governor in the closest relationship. At present we have experience, as a

matter of practical knowledge, that the rules that are made by the Governor are, first, what are known as the Business Rules, second, what are known as the Secretariat Rules. These rules are so inconvenient through the transfer of Departments, that oftentimes friction arose. Therefore, if these rules are made not by the Governor at his discretion or in mere consultation, would it not be in harmony with the working of the Cabinet and of the relations of the Governor with his Ministers, that these Business Rules should be prepared not merely in consultation and at his discretion but in agreement with the Ministers?—I would hope myself that in actual practice almost invariably they would be made with the agreement of the Ministers. Obviously, it is tremendously to the advantage both of the Government and the Ministers that they agree upon their rules of business. One must, however, contemplate a situation in which the Ministry might insist upon rules of business that would endanger the Governor's special responsibilities. It is on that account that whilst our desire and our intention is that there should be the closest co-operation between the Governor and the Ministers, we feel that the ultimate decision must be at the discretion of the Governor.

6572. In regard to the discharge of special responsibilities, there are various other provisions which secure to him the right of action, and in these rules, if any such provision has been made that he should be the sole authority in making the rules, then it will lead to practical difficulties in the working of the Cabinet, as we find to-day?—I should hope it would not lead to any more difficulty; it is so much to the advantage of both sides to work together in a case of this kind.

6573. Then the next part of this proposal is for the transmission to himself of all such information as he may direct. Does that contemplate that the Governor will have a special Secretariat of his own in addition to his Private Secretary?—No. The position is just as Sir Malcolm Hailey and I stated it, namely, that the Governor would have what staff he requires, and Sir Malcolm yesterday gave a general kind of estimate of the sort of staff that was contemplated.

6574. Is it then in regard to the proposals in 92 and 103 relating to the Governor's acts and ordinances, that I understand you are going further to consider the powers of the Governor? In view of the discussion that has been held here, do I understand that those matters will be further considered?—I would like Sir A. P. Patro to put a more precise question than that. That is a very general question.

6575. In regard to the Governor's Act, it has been said that the consultation with the Legislature leads to difficulties?—Yes. In that case, I said I would certainly take into account the views which have been expressed this morning.

6576. Then similarly, with regard to the power of ordinances and the discharge of special responsibilities, whether he should issue an ordinance without consulting the Governor-General: In regard to that matter also, I suppose further consideration will be given?—Yes. As far as I am concerned, the position is as I stated it a few minutes ago.

6577. Then the other question is with regard to the financial powers of the Governor, Proposal 100. "The provisions of paragraphs 95 to 99, inclusive, will apply with the necessary modifications, to proposals for the appropriation of Revenue to meet expenditure not included in the annual estimates which it may become necessary to incur during the course of the financial year." Now with regard to the modifications of these proposals, is it meant that these modifications will be in the devolution rules or the financial rules or will they be in-

corporated in the Constitution Act?—(Sir *Malcolm Hailey*.) The meaning of paragraph 100 is that if you have a supplementary Budget, the procedure will be the same as in the general annual Budget in regard to the demand of appropriation and the like.

6578. But the modified rules, as you say, will be the financial rules that will be included in the devolution rules?—I do not think we contemplate devolution rules.

Sir A. P. Patro.] You have got anyhow a financial Department in the Provinces?

*Sir Tej Bahadur Sapru.*

6579. There will be no occasion for devolution rules?—No; the White Paper itself says nothing as to a Finance Department. It does not lay down, as the present devolution rules do, that there must be a Finance Department, and it may have to be considered subsequently whether some mention of a Finance Department may not have to be introduced into the White Paper.

*Sir A. P. Patro.*

6580. That is what I wanted to know, whether it is not contemplated that the formation of a Finance Department in a Province is not absolutely necessary?—Yes; it is certainly a point that I think the Secretary of State has mentioned before in the discussion, but it will have to be considered as to how far special provision will have to be made in the Statute for a Finance Department.

(After a short adjournment.)

*Sir N. N. Sircar.*

6581. My Lord Chairman, may I ask the attention of the Secretary of State to certain possible but very specific dangers which have been indicated by questions of Lord Salisbury and some other Members of the Committee. If he kindly refers to Questions 5700 and 5704, the Secretary of State will find that Question 5700 deals with the situation when the responsible Minister has declined to carry out the wishes of the Governor, and Question 5704, Lord Salisbury's question, points out the fact that

the local Police and others will depend very largely upon the Minister. If he will read one more question, I shall put my questions on these three questions. In Question No. 5665, the danger of the Governor not being kept familiar with the events happening in his Province is pointed out. Bearing these three questions in mind, may I ask the Secretary of State whether it is not the correct position that so far as the superior officers are concerned, their pay, pension, promotion, posting, even a vote of censure on their conduct, are all beyond the competence of the Minister?—(Sir

*Samuel Hoare.*) Broadly speaking, that is the case.

6582. Having regard to Proposal No. 69, which enables the Governor to require that information of certain kinds will be transmitted to him, do you think that the Governor would have any difficulty whatsoever in getting very full and accurate information of events happening in the Province?—My definite view is that he would not, that under 69, he can obtain whatever information he requires.

6583. May I have your opinion as to whether the Governor's position under the White Paper scheme proposals, is not something like this: Taking a purely theoretical point of view, his powers are limited but when an emergency or when a case of special responsibility does arise, he can take whatever action he thinks fit. Is that the theory?—Yes.

6584. And of what constitutes an occasion of a special responsibility the White Paper makes it perfectly clear that he will be the sole judge. That is so, is it?—Yes.

6585. I am asking a specific question, because some questions were put to you, Secretary of State, as regards the Intelligence branch of the C. I. D., and so on. Supposing the White Paper proposals remain as they are, and you do not introduce specific provisions about either the Intelligence branch or the C.I.D., under the proposals will there be the slightest difficulty in the Governor taking charge either of the Intelligence branch or of the C.I.D., or of the C.I.D. plus the section of the Police, whatever may be necessary, for meeting a situation which has arisen?—It is certainly our intention that the Governor should have full powers in those respects. We think that under the White Paper proposals, he has been given those powers. If, when it comes to drafting final proposals, it is found that he has not got those powers, obviously, if the policy is maintained as set out now in the White Paper, a further definition will have to be given to make it quite clear that he has got those powers.

6586. In your opinion, under the White Paper proposals, will there be any difficulty in this: For instance, the Governor, having regard to an emergency situation, says: "I take over officers, A,

B and C; two divisions of Police; one Inspector-General," and so on. "I take them over and attach them to my special Department relating to special responsibility." Will there be either Constitutional or administrative difficulty?—So far as I know, there should not be, but our definite intention is that the Governor should have what powers are required and, if it is found in drafting that he has not got those powers under the proposals as they are now, there must be a change in the drafting of the proposals.

6587. May I be permitted to ask Sir Malcolm Hailey if there will be any administrative difficulty in the way of the suggestion that I have made? I am not asking on the Constitutional aspect?—(Sir *Malcolm Hailey.*) No. If the Governor took over that special branch, he would give his orders through, no doubt, his own Secretary to the Inspector-General of Police, who would convey them to the special branch in exactly the same way as he would convey orders from the local Government had the Governor not exercised his special responsibilities.

6588. I think a previous answer covers this, but may I ask you specifically: Under the White Paper proposal there will be nothing to prevent the Governor, if he thinks necessary, from saying that Police information relating to certain kinds of crimes should be accessible only to certain individuals?—(Sir *Samuel Hoare.*) That is so.

6589. I draw your attention to a question put by Sir Austen Chamberlain, Question No. 5746. There Sir Austen points out that it is undesirable to have recourse more often than is necessary to special responsibility and breakdown clauses. I am quite sure that the Secretary of State fully agrees with that view?—Yes, entirely.

6590. If that is so, what I am asking you is this: Under the White Paper scheme which defines the powers of the Governor in connection with special responsibilities in very wide language, is it not more suitable than providing specifically that the Governor will have charge of the special branch in this way: That if the Governor has confidence in the Minister, or if the Minister is willing to abide by necessary conventions, he may not bring into operation this section of

special responsibility at all. Is that not the better policy, rather than specifying section 74 as part of reserving the special responsibility of the Governor?—That has been our view in making almost all the proposals of this kind in the White Paper. We wish to assume that these were exceptional powers and that the best way to deal with them was to give the Governors general powers rather than to set out in explicit detail a list of the actual ways in which he was to carry them in effect. That is really the general reason that has prompted us to take the line we have.

6591. You were asked certain questions about breakdowns, for instance, beginning at Question 5718. I will ask you one question about it. There have been previous instances of breakdowns under the present Constitution, for instance, in Bengal in 1924 and 1925?—Yes.

6592. It was pointed out by one of the Members of the Committee that when those breakdowns took place, there was the nucleus of the Executive Council—the Executive Member was there?—Yes.

6593. We know that he will not be there when a breakdown takes place under the proposed Constitution?—Yes.

6594. But remembering that the officer of the Superior Service, the Secretarial staff and practically every officer of every Department will be available to the Governor, do you really think there will be any difficulty in the King's administration being carried on if there is a breakdown?—No, I do not think there should be.

6595. I want to ask you one question which has not yet been answered, about the Second Chamber. You may remember that Dr. Shafa'at Ahmad Khan asked you whether or not there was a resolution in the Bengal Legislative Council against the institution of Second Chambers, and you gave certain answers. What I am asking you is this: If you take the Resolutions of the Bengal Council as an index, is it not the fact that on the 2nd August, 1932, this Council by a Majority of 47 to 52, the majority including 8 Muhammadans, passed a Resolution against any communal or separate Muhammadan electorate. Would you say that that represents the true state of feeling in

Bengal, having regard to your other information that there is no demand for communal electoral representation for Muhammadans?

Dr. Shafa'at Ahmad Khan.] What was the proportion of those Muhammadans who voted for a separate electorate?

Sir N. N. Sircar.] The Resolution that was passed was against communal representation?

Mr. Zafrulla Khan.] My Lord Chairman, are we to go into these questions at this stage in connection with the Provincial Governments?

Sir N. N. Sircar.

6596. If I may put my question in this way: Are any of these resolutions, having regard to your other information, reliable as a safe guide for action?—I think we have got to pay great attention, of course, to the opinion of a Provincial Legislature, but I do not think we can necessarily bind ourselves to taking that as the exclusive or sole opinion that we have to take into account. Moreover, in the particular case of the voting upon the Bengal Second Chamber, I am inclined to think from the information that has come to me, that there was a good deal of misunderstanding in the voting to this extent that, at any rate, one of the communities was very nervous of the communal decision affecting the First Chamber being reversed in the Second Chamber. Now, quite obviously, a question of that kind can only be answered intelligently when it is known how the Second Chamber is going to be constituted, and without making any criticism of the Bengal Chamber or any of its Members, there is this fact that at the time the resolution was passed I do not think they knew the kind of way in which it was contemplated the Second Chambers should be formed.

6597. The last question is this: May I ask you generally, now that your attention has been drawn in your examination by so many members of the Committee to the possible dangers of the transfer of Law and Order, are you still definitely of opinion that those dangers are amply safeguarded by the provisions made in the White Paper?—Yes, I think so. I would never be too definite in giving an answer of that kind until I have heard the further



discussions of the Committee ; but, so far as the Government are concerned, we have done our utmost, assuming that Law and Order is going to be transferred, to ensure that the transference should take place in the safest possible conditions.

*Mr. Zafrulla Khan.*

6598. May I, with your permission, my Lord Chairman, put one question arising out of the last question but one put by Sir N. N. Sircar ? Sir Samuel, may I assume that a resolution passed in the local legislature with regard to the setting up one way or the other of a second chamber, would not be of any very great value unless the legislature knew more or less the kind of second chamber that was to be set up ?—Yes, I would certainly say that, and that was really the object of my giving the answer I gave just now.

6599. I put this question with reference to what I suggested myself the other day to you, that in considering this matter further you might look at this aspect, which was suggested by me, that if a resolution was passed by a local legislature, asking for the setting up of a second chamber of a certain kind and type specified by them, something might be done towards recognising the conditions that they might lay down. It rather emphasises the point I put to you yesterday, that if they were asked merely to limit themselves to the setting up of a second chamber and did not know what the type of it was to be, it would not be of very great help, and they would, possibly, be rather chary of committing themselves to that position ?—I think we must keep in mind Mr. Zafrulla Khan's contention. I think it is very germane to the point as to whether a resolution was anywhere passed or not with full knowledge of the conditions behind it.

*Chairman.*] That concludes the Section which we have called the "Provinces." The next Section is the "Federation," paragraphs 1 to 60.

*Marquess of Salisbury.*

6600. May I begin with the Proposal in paragraph 4, that is to say, the adhesion of the number of States which will make federation possible. This is

a very small question really, but there is a difference of language between Proposal 4 and paragraph 12 of the Introduction, because Proposal 4 speaks of a desire to accede of 50 per cent., which is held on the wording of Proposal 4 to be sufficient, whereas in the Introduction what is spoken of is that the Instrument of Accession should be formulated and accepted. I only wish to know which is the right one ?—We certainly mean that the Instrument of Accession should be formulated and accepted.

6601. I thought that was the answer. Then I go on to the first substantial question which I have to put : Who is to decide whether the terms of the Instrument of Accession are adequate ?—The Government.

6602. Which Government ?—The British Government in the first instance. Lord Salisbury will remember that we have suggested that provision must be made in the future for the Federation itself having some say in the conditions in which any new State would accede.

6603. I was going on to that next, but I wanted to get it quite clear that at the outset it is the Secretary of State who decides whether the terms are sufficient ?—Yes.

6604. Then may I go on to the second question : Hereafter when a State not hitherto having acceded proposes to accede, who will decide whether the terms are adequate ?—We have made no explicit proposal as to a particular period of time in the Proposals, but quite obviously we shall have to make the Proposals explicit in any Bill. Our conception of the state of affairs is that the Crown must be the judge in the initial stages, but that after that the Federation itself should have a say in the decision in some way or another.

6605. The Secretary of State means, that is to say, the Federal Government, not the Viceroy acting in his discretion ?—No ; I think Lord Salisbury will find that the Federal Government have a very direct interest, looking to the future, in questions of that kind. It might, for instance, be said that the entry of a particular State in the future was prejudicing the rights of existing members of the Federation, and I hold that in some way or other the view of the Federal Government and the Federal Legislature ought to have an influence,

whatever form it may take, in the decision which is then taken.

6606. I am very much obliged ; but that is rather an important answer. What kind of influence ? Does the Secretary of State contemplate a vote of the Federal Legislature ?—No, I have not gone so far as to work out the details. This, after all, is a situation not in the immediate future but in the somewhat distant future.

6607. Surely not ; it might begin in two or three months after Federation had started ?—No, I am not assuming that ; I am assuming that there must be a period during which the decision is with the Crown.

6608. A period even after Federation and the Central Government have started ?—Yes, I think there must be a period of some kind.

6609. You mean that after the Central Legislature and Constitution are in working order there might be an interval, say, of five years before any other State was allowed to join ?—No, not at all ; but the decision should for a period rest with the same authority that gave the decision for the entry of the States in the initial chapter.

6610. I beg your pardon ; I ought to have understood that. You mean that the same authority, the Secretary of State, still will control it ?—For that period, the chief reason in my mind being that one wants a period of stability for the initial chapter, and that therefore there had better be as few changes as possible in the first period of years.

6611. But at any rate there will be, or may be, an interval between the starting of the Central Constitution and the full number of State adhesions ?—What does Lord Salisbury mean exactly by “ the full number ” ?

6612. You begin, say, with 50 per cent. or a little over 50 per cent. ; there must be a certain period of years before anything like 100 per cent. join ?—It is very difficult to make an estimate or prophecy at all. I have had given me from the best possible sources very different views in answer to a question of that kind. One view which is very strongly held is that if 50 or 51 per cent. of the more important States join the Federation, the greater part of the

other States will join without much delay. That is a view which is very strongly held.

6613. But at any rate we must provide for the cases in which there would be an interval. The Secretary of State is, of course, aware that a great deal of attention has been paid to the intervening period, when only a relatively small number of States will have joined ?—Certainly.

6614. The adhesion of the States is contemplated, as I understand, as a standardising factor in the new Legislature ?—Certainly.

6615. Therefore in the absence of anything like a full adhesion of the States the balance of power would, as it were, be not final in the Legislature ?—I am not quite sure that I understand what Lord Salisbury means by “ not final ” ?

6616. It is clear, without going into the communal question, that it might be that the States which joined gave an undue power and majority to one particular religious connection in the Central Legislature. When I say “ undue ”, I mean undue having regard to what is contemplated as the complete establishment ?—I would not myself have thought that communal interests of that kind would enter so prominently into the question ; but if Lord Salisbury means by his question that in the interim period there ought to be interim arrangements made for the Princes' vote having effective power behind it, then I agree with him ; I think that on the whole arrangements of some kind ought to be made.

6617. The Secretary of State has very much shortened what I wanted to put, and I am obliged to him. Have the Government and the Secretary of State thought what form that interim arrangement ought to take ?—We have had before us a number of alternatives. I cannot say that we are altogether satisfied with any of them, but some of them seem to us to be more effective than others. For instance, it has been suggested that the Viceroy might by nomination fill up the vacant seats in the interim period ; secondly, it has been suggested that however many States may accede in the interim period, their voting strength would count as effectively as if there were 100 per cent. re-

presentation of the Princes ; thirdly, it has been suggested that the acceding States should themselves be empowered to appoint additional representatives in the interim period. Of these three alternatives, I see great objection to the first, namely, the Viceroy nominating members to fill up the vacant places ; it seems to me that nomination of that kind would not really be States representation at all, and I think it would be open to very grave misrepresentation in India, where a good many people would think that we were trying by that means to create an official *bloc*. The second alternative, namely, that the votes of the Princes who accede should be given weightage, namely, that one vote should count more than one in a division, I also dislike ; it seems to me to be somewhat contrary to my own ideas as to voting in assemblies ; and I therefore incline to the third of the proposals, namely, that the acceding States should be allowed to appoint, at any rate for a period, some additional members in order to ensure that their voting strength would be effective.

6618. Of course, if there were an undue predominance amongst the acceding States of a particular way of thinking, that would intensify that, would it not ?—It would not correct it, I quite agree ; but then Lord Salisbury is contemplating a situation that I am not contemplating. Here the States representatives can give a much better view than I can, but I do not myself believe that they will select their representatives upon a communal basis ; I think they will think much more prominently of their own distinctive interests.

6619. I only gave the communal question as an example, but there might be a difference between inland States and maritime States. There are many differences, economic as well as religious ; but, however, I take the hint of the Secretary of State : he has suggested that the Delegates representing the States are better judges of this than he is, and I had better perhaps leave the further points to them ?—It must be remembered that we are assuming not a mere 50 per cent. of all the States, but 50 per cent. of the important States. Well, perhaps if I use the word "important," it implies that the other States are not important,

but I mean 50 per cent. of the States who have a right to separate representation in the Second Chamber ; and I would have thought that, assuming that that number accedes, it will be a pretty representative body, and I think if they appoint additional Members they are not likely to weight one interest at the expense of another.

Archbishop of *Canterbury*.

6620. In order to save repetition later, would Lord Salisbury allow me to put a question : you said that the States already on the Council might have the right of nominating additional Members so as to secure their full voting influence in the Chamber ?—I did not say "their full voting influence." I do not think it necessarily follows that the additional Members should represent the full 100 per cent.

6621. No, I follow that, but my question is a very simple one : you speak of a period during which this arrangement would be possible. That would not, I suppose, be a period of years, but until a larger number of States had come in ?—Yes.

6622. Would it not be a little difficult if certain Members had been introduced upon your plan, and then as soon as one or two more States came in they should have to go out ?—I think not only would it be a little difficult, but it would be very difficult ; but all these proposals are very difficult, and the alternatives seem to me to be more difficult still. The alternative is an alternative under which the voting strength of the Princes is comparatively weak. Both from their point of view and from other points of view, we should like to avoid that contingency if we can.

Marquess of *Reading*.] Will the Secretary of State amplify that a little, if Lord Salisbury will allow me to ask him to do so now, and then we need not come back to this ?

*Chairman*.] By all means.

Marquess of *Reading*.

6623. I only want to know this : supposing you have 51 per cent. of the States joining, and then they get a weightage, and afterwards other States join, have you in mind what is to happen then ? Suppose, for example, you

have representation which would amount to 80 per cent. of the full representation of the Princes by the weightage which is suggested; if you get an accession of 20 per cent., have you anything in mind as to what is to happen then?—There would have to be an adjustment. We should come to some general decision that by this means the voting power of the States would be brought up to X percentage of their 100 per cent., and it would remain at that, whether new States came in or whether they did not, until sufficient States came in to get it above that percentage.

Viscount *Burnham*.

6624. May I ask the Secretary of State whether the system of weightage in favour of the bigger States which he proposes does not ensure a still greater and perhaps more unfair predominance of the bigger States over the smaller States?—I do not know what Lord Burnham means by "weightage in favour of the bigger States."

6625. Increasing the representation, as I understand the Secretary of State to suggest, of those States which enter immediately into accession; they are going to have extra representation?—It is not to be assumed that the smaller States will not come in at once.

6626. I thought that it was assumed that this was to supply the place of such States, presumably the smaller States, as do not come in?—I know, but I do not know why Lord Burnham says "presumably the smaller States"; I do not agree.

6627. I was only judging a little by the representation of States which I see opposite me here. They are mostly the bigger States?—The States can speak for themselves on questions of this kind; I am not assuming that it will be either the bigger States or the smaller States which will come in first. I think there will be some of both.

Mr. *Y. Thombare*.

6628. I think the smaller States will not be behind the larger States in joining the Federation?—Here is the representative of the smaller State of Sangli, who says that they will be anxious to come in behind the bigger States at once.

Mr. *J. C. C. Davidson*.] When Mr. Thombare uses the word "behind," does he mean in point of time?

Mr. *Y. Thombare*.

6629. I mean that they will not lag behind the larger States in joining the Federation; they will not delay?—If the smaller States think that the bigger States are getting an undue influence in the Federal Centre, then the remedy is for the smaller States to accede in greater numbers, and *vice versa*, the other way round.

Marquess of *Salisbury*.

6630. I was not thinking merely of the interests of the States, but of the interests of the Assembly, who will vote altogether, of course?—Yes, it is just because of that feeling, which is equally in my own mind, that I am suggesting these various methods of giving weightage until all the Princes accede.

Marquess of *Reading*.

6631. That would apply in both Houses, I suppose?—Yes, it would have to.

Sir *A. P. Patro*.

6632. Is there any precedent for such a weightage as is suggested in the White Paper?—There is not any precedent for this kind of Federation anywhere in the world.

Dr. *B. R. Ambedkar*.

6633. Does this system of weightage apply only when the Princes do not come up to the limit fixed in the White Paper, namely, 50 per cent.?—No, it is between the 50 per cent. and 100 per cent.

Marquess of *Salisbury*.

6634. Now may I take Proposal No. 11? That is the proposal which establishes the Reserved Departments. The question which I want to put to the Secretary of State, and the question which we have discussed, is, how far in point of fact will the Legislature be able to influence the decisions of the Viceroy in respect of the Reserved Departments?—I think I had better put

my answer into as concrete terms as I can. I imagine that the Department which is particularly in Lord Salisbury's mind is the Department of Defence?

6635. That is so?—For the Department of Defence, the Governor General will be solely and exclusively responsible; there will be no divided responsibility of any kind. Assuming this sole and exclusive responsibility, the Governor-General will no doubt wish to carry with him as far as he can the Federal Government and the Federal Legislature. Obviously, it will be greatly to the advantage of the Governor-General to have public opinion behind him, expressed both through the Government and through the Legislature. That being so, we are anxious that he should take every possible opportunity of carrying his Ministers with him, of consulting them, so far as he can, about his general line of policy, and of obtaining from them, if he can, their support for any proposals, financial or otherwise, that he may think it his duty to make. Similarly with the Legislature, under the present state of affairs, the Legislature has no power for voting defence expenditure, but is given an opportunity of discussing defence expenditure. That opportunity we should continue to give to the Legislature. The further question then arises: What influence would public opinion exercise upon the Governor-General; what influence would it not exercise upon the Governor-General: would it exercise more influence than it does now, or the same kind of influence, or less influence? It is very difficult to give an explicit answer to a question of that kind. It may be argued that with the institution of a responsible Government at the Federal Centre and of a responsible Legislature, the pressure of public opinion will become stronger and stronger. Already, it is very strong; some would say that it would become stronger. On the other hand, I myself am inclined to think that, even if it may become stronger, it will, on the whole, become friendlier. I believe myself that, in the nature of things, there will be several Ministers, perhaps all of them, in the Federal Ministry, who will be very directly interested in keeping defence in India upon an effective basis. I believe myself

that their support will be extremely useful to the Viceroy when it comes to any discussion in the Federal Assembly. I believe myself that, in the discussions of the Federal Assembly, there will be found to be perhaps more support for the defence proposals of the Viceroy than could be found for them now in a comparatively irresponsible Assembly. My own view, therefore, is that the pressure of public opinion in the future will not develop upon the lines of embarrassing the Viceroy in his duties; I believe it may even strengthen him. Supposing, however, that the Federal Government and the Federal Legislature were opposed to his policy, his responsibility is sole, and we are giving him full powers to carry it into effect.

6636. Let us take the case which the Secretary of State has last put. Let us suppose that the proposals of the Governor-General were criticised in the Legislature; they would have power, I understand, of not only discussing it, but of passing Resolutions upon the subject?—They could not have a Resolution about a money vote.

6637. But they could pass a Resolution: "That in the opinion of this House, it is inexpedient", and so forth, to spend so much money on the defences?—So they can now, I suppose.

Mr. Rangaswami Iyenger.] They have done it.

Marquess of Salisbury.

6638. It does not make it any better that they have done it. I am asking whether they can do it?—Lord Salisbury will see that it does not make it any better, but it does not make it any worse.

6639. Let us suppose they did that, and let us suppose the Government voted with the majority in favour of the Resolution, criticising the Governor-General's defence policy, would not that put the Governor-General in a very difficult position?—I do not think it would any more than now when the Legislature might pass a similar Resolution.

6640. The Government would be voting against it?—To that extent, it might make the difference of opinion more serious.

6641. That is all I suggested to the Secretary of State, that it was more serious for him. I understand the Secretary of State agrees to that. It would be more serious for him, if his Government voted against him?—Yes, I think it would be; but, on the other hand, Lord Salisbury must keep in mind the alternative, namely, when the Legislature may be inclined to be against him and when he may have the support of the Government which would be of very great value to him in the Legislature.

6642. You think that the case is likely when the Legislature would be against him, but the Government in his favour?—Yes, I can believe that possible.

6643. Then the Government would be in a minority in the Chamber then?—It might be for that one purpose.

6644. It is not usual to have the Government in a minority; at least we have had it in this country, but it does not work very well?—I own it is very much better to have a majority, if you can have one.

Sir Akbar Hydari.] When the responsible Government is mentioned, it is the Government of the Transferred Subjects, but Defence is a Reserved Subject.

Marquess of Salisbury.] There will be under the White Paper only one Government in the Central Legislature representing, we presume, the majority there, but the Secretary of State contemplates a case when the majority will vote against the Government.

Lord Eustace Percy.

6645. May I ask the Secretary of State, as a supplementary question, whether he contemplates what I think Lord Salisbury is contemplating, namely, a Government which remains in office but refuses to introduce the Army Estimates into the Legislature? Because the situation that Lord Salisbury conceives can only happen in that event?—I think that is so. A Government cannot refuse to provide the funds for Defence.

Marquess of Salisbury.

6646. As I understand, the Governor-General himself would then (I forget the

exact words) insert in the Estimates the sums of money required for his Defence Services?—Yes.

6647. That I understand to be the system?—Yes.

Marquess of Salisbury.] I do not understand quite what my noble friend's interruption was for?

Lord Eustace Percy.] My only point is that you would have to begin your supposition rather further back. You would have to assume that the Finance Minister refused to include the necessary Army expenditure in his Budget, and, clearly, there would be a very serious difference of opinion between the Governor-General and his Ministers before it ever came into the Legislative Assembly, in that event.

Marquess of Salisbury.

6648. It might even be the case which my noble friend has put. Of course, I am assuming, which is not a very rash assumption, that there is not very much money to go round, because it happens to be the case notoriously at this moment. Therefore, let us assume that the Finances are hard up, and, thereupon, the Minister representing the majority, and anxious for the money for very great domestic purposes, differs from the Governor-General as to the Defence expenditure, and let us assume that thereupon the majority of the Chamber passes a Resolution criticising the Defence expenditure which the Finance Minister votes for. Would not the Governor-General be in a very difficult position, in those circumstances?—He might certainly be in a difficult position, but his powers would be unimpaired. The Secretary of State and Parliament here would be behind him, and he could see that sufficient funds were forthcoming.

6649. But the Secretary of State said to us what I thought was so very true just now, that there would be a very strong motive on the part of the Governor-General, if he could, to keep on good terms with public opinion in these matters?—Yes, I think that is obvious, but I do not suggest by that that the Governor-General should fail to carry out one of his primary duties, namely, to ensure that there are sufficient funds for the Defence of India.

6650. You do not suggest it, but you would not think it at all extravagant that the Governor-General would go as far as he could to meet this feeling?—So he does now.

6651. He would have a strong temptation even to go a little further than perhaps he ought to?—I do not think so.

Marquess of Zetland.

6652. May I ask a question, with Lord Salisbury's permission? I have forgotten for the moment—is the Army expenditure votable?—No.

6653. Then surely this question could not arise. It is non-votable.

Marquess of Salisbury.] I know it is. I thought I had made it clear by asking questions of the Secretary of State whether it would not be possible, nevertheless, for the Legislature to pass a Resolution criticising the policy which led to it.

Viscount Burnham.] And the money for the Civil expenditure?

Marquess of Zetland.] But we were talking about the Army Expenditure.

Viscount Burnham.] I mean, for the Civil expenditure of the Army.

Witness.] Under the White Paper proposals, it is not.

6654. Then an alteration is made?—Yes, there are a great many.

Marquess of Zetland.] Under the White Paper, it is not.

Marquess of Salisbury.

6655. I have said quite enough. I am quite sure that the majority of the Assembly would have great influence over the Governor-General in respect of these reserved Departments?—Lord Salisbury is trying to make me say that I think the Governor-General will surrender to undue pressure from the Legislature. I do not think that at all.

6656. I am certainly not going to press the Secretary of State. I only wanted to get it quite clear. Let me pass for a moment to the analogous subject of the special responsibilities of the Governor-General. We have ascertained, I think, this morning how close the responsibility of the Governor-General is, in this matter, with the responsibility of the Governor.

What I suggest to the Secretary of State is that it is very important, from the Governor's point of view as well as from the Governor-General's point of view that the Governor-General should be able to act quite independently in respect of his special responsibilities?—I am not quite clear what Lord Salisbury means, by acting independently.

6657. In this case again, he might have to act under his special responsibilities in the face of a hostile majority of the Central Assembly?—Yes, certainly.

6658. And that might be formidable, not merely in respect of his own jurisdiction, but it might interfere very much with the jurisdiction of the Governors. We have already ascertained that the Governors would be subject to the Governor-General in this respect. Let me put a case of this kind: That in a particular Province there was a case in which the Governor thought it right to exercise his special responsibility; thereupon there is an agitation which springs up in the Centre to urge the Governor-General to refuse his consent to the Governor's action, and, in deference to that agitation, a majority of the Central Chamber-votes that the Governor-General should not exercise his special responsibility in this matter. Do you not think that that would embarrass both the Governor-General and the Governor?—My answer is just the same as the answer I gave just now, namely: I am assuming that the Governor in the Province, and the Governor-General will carry out these responsibilities as we intend they should be carried out, without surrendering to pressure of that kind.

Lord Irwin.

6659. May I, with Lord Salisbury's permission, put one question to the Secretary of State on that? Would it not be the fact in such a case as Lord Salisbury has suggested of pressure being put upon the Governor-General to interfere with the exercise by the Governor of his special responsibility, that it would be open to the Governor-General to refuse to permit such a discussion being held in the Central Legislature, if he thought it was against the public interest, as indeed, he occasionally has to do at present?—Yes, that certainly is

so, and Lord Irwin will see the provision we have made for it under paragraph 52 on page 51, particularly (b) (2).

Marquess of *Salisbury*.

6660. I will take you, if I may, to a very much less difficult matter merely for the purpose of explanation. There is a curious phrase in paragraph 33 of the Introduction—it begins at the bottom of page 17. There are certain discretionary powers there of the Governor-General. At the top of page 18 it is said: "In this category of 'discretionary powers' the precise range of which it will be impossible exhaustively to foresee until the drafting of the Constitution Act has reached completion, His Majesty's Government anticipate that the following matters will be included." There is a sort of dubitative air about that paragraph; I am sure it can be easily explained, if the Secretary of State will explain what is contemplated, why there should be a doubt about the matter?—It simply is a drafting point. We are not quite sure whether we have made the list entirely exhaustive; there is nothing further in our minds.

6661. I am not going to press a drafting point for a moment, but there will be no doubt, for example, as to the power to withhold the assent from Bills or to reserve them for the signification of His Majesty's Pleasure?—No, certainly not. We regard those four categories (a) to (d) as certainly coming within the discretionary powers of the Governor-General. We have put in the words in the previous paragraph, in case the list is not exhaustive.

6662. Thank you very much; I only wanted to clear that up. Now I am not going over the ground which has been already covered about the Provinces. I suppose the answer of the Secretary of State about a Prime Minister or not would be the same as it was in the case of the Governor?—Yes.

6663. There is one little question under Proposal 38, the financial power of the Council of State. The Secretary of State will remember that the Witnesses who appeared on behalf of the Chamber of Princes desired that the Council of State should have equal powers with the Assembly in financial matters. I do not

know whether the Secretary of State has any observation to make upon that; I do not think he has had the opportunity of saying anything upon that yet?—Our proposals are based upon the general plan that the powers should be substantially equal. We arrived at this view because we were impressed by the considerations that were urged upon all three Round Table Conferences by the representative of the Princes, who made a great point, owing to the fact that their representation will be stronger in the Second Chamber, that the Chambers should be substantially co-equal in powers. We have tried, generally speaking, to carry that into effect. At the same time, when we come to finance, there is the practical difficulty in procedure of introducing grants for supply, and so on, in both Chambers, and we, therefore, suggest under our proposals that the grants should be introduced in the Lower House, and they can, if need be, be taken to the Upper House to give the Upper House an opportunity of voting upon them; but we did see grave practical difficulties in a system under which money grants could be introduced, perhaps, simultaneously in the two Houses.

6664. Does the Secretary of State say that the two Chambers will be, except for the case of initiating money grants, in exactly the same position?—Yes, the two Houses, all other respects, with this one reservation: In the case of supply, the Government must put it before the Upper House. It is the Government that takes the initiative.

6665. But the Upper House will be able to vote on supply?—Yes, in those conditions.

Marquess of *Reading*.

6666. May I ask one question? Secretary of State, would it inconvenience you to tell us what you have in mind by the term "Money Bills"?—But in a single word, taxation. That is really what we have got principally in mind. I would not like to be tied down to a definition exactly.

6667. Of course, there must be a limit upon the term "Money Bills," because of what you have just said about Supply?—Yes; that is essentially a matter for accurate draftsmanship later on.



Lord *Rankeillour*.

6668. You do not propose to take the definition of a "Money Bill" here?—I should like to look into that further, before I can give an answer.

Marquess of *Salisbury*.

6669. I am not, of course, going to ask you again in respect of Proposal 42. I suppose your answers with regard to the Governor-General will follow exactly the same line as on the Governor?—Yes.

6670. That is, as to the Governor-General's Acts?—Yes.

6671. Similarly, with regard to the Ordinance paragraphs, paragraphs 53 and 54?—Yes. May I add this sentence to the answer I have just given to Lord *Salisbury*? In the case of the Governor-General, the position will be easier in one respect than it is for the Provincial Governor, for this reason: The Governor-General will have the three Counsellors for his Reserved Departments, and those Counsellors can, of course, introduce measures of this kind upon his initiative in the Federal Legislature.

6672. Then you would be rather inclined to give a different answer in the case of the Governor-General than in the case of the Governor, would you?—No, the same answer, but adding to that answer the fact that the actual procedure is easier for the Governor-General than it is for the Governor owing to the Governor-General having three Counsellors whom he can instruct to introduce his measures in the Federal Legislature.

6673. Although that would deal with that particular point, there would still remain all Sir *Tej Saprú's* objections as to the difficulty of having submitted a Bill to the Assembly and it being rejected, everybody would be in a very difficult position?—Yes, I think those objections would substantially remain. At the same time, the main objection that was urged by Sir *Austen Chamberlain* this morning, namely, that there would be no machinery under which the Provincial Governor could carry out those duties, does not apply to the case of the Governor-General.

6674. That is quite true. Then as regards the Ordinances power under Proposal No. 53, may I ask why the power is limited to six months?—The reason is

that we assume that Ordinances will be for temporary purposes. At the same time, if the emergency continues it is possible for the Governor-General to renew the Ordinances. In that case he has to get a resolution of Parliament; but it is based upon the conception that Ordinances are temporary measures to meet a particular situation.

6675. The result of that is that if the Governor-General saw that legislation was absolutely essential he would have to act under Proposal 42; he could not act under Proposal 53?—He would then have to act by means of Governor-General's legislation.

6676. Supposing it were held by the Committee—though I have, of course, no reason to assume it—that this process of submitting a Bill to the Legislature and forcing it through was objectionable, then the Ordinances power by itself would not be sufficient, because it is limited to six months?—I think that might be so.

6677. In that case there would be a rather strong argument for removing the six months' limit?—Yes, or retaining the proposals which we have made for permanent legislation.

*Marquess of Salisbury.*] I was assuming that that was the hypothesis. Thank you very much. I think those are all the questions which I have to put.

*Archbishop of Canterbury.*

6678. I will trouble you with only one or two very general questions and one of detail. Is it in order to say a word about the inauguration of the Federal scheme at this stage, apart from its constitution?—I do not mind at all.

*Chairman.*

6679. That will come later?—I should have thought, my Lord *Chairman*, subject to what you say, that it did come into this general chapter of our discussions.

*Archbishop of Canterbury.*] It is a very simple question.

*Chairman.*] If you please.

*Archbishop of Canterbury.*

6680. You contemplate, before the Federal Constitution comes into being, the accession of the necessary number of

States and also sufficient financial provision and the coming into existence of the autonomous Provinces. I suppose you would consider that that condition had been satisfied when the autonomous Provinces had been created? You do not contemplate their being, as has been suggested, for some time under a period of probation?—I have never been able to see myself, apart from the controversy which has rather ranged round this subject, how a period of probation really helps you very much. It is so difficult to say what is meant by a period of probation, and whether you are to apply the same tests to all the Provinces and so on. It has always seemed to me that when you come to analyse it it is practically impossible.

6681. So that we may assume that what is contemplated in the White Paper is that so far as this precondition of the setting up of the Federal Constitution is concerned it is sufficient that the autonomous Provinces should be in being?—With the other conditions.

6682. Then one question on detail, which is a small matter, but I think it is very important that it should be on record; it may remove a great many misunderstandings: Will you be so good as to define as far as you can the exact range and scope of what is called Ecclesiastical Affairs as a Reserved Department?—Yes. What we intend to mean by the reservation of the Ecclesiastical Department is the reservation of the existing department, namely, the adequate provision of religious ministrations for the Army and the Services. We do not contemplate any further extensions of the Ecclesiastical Department. That, speaking generally, is the kind of department that we have in mind.

6683. So that in point of fact, though for good reasons a Reserved Department, it is a very small matter: it affects only religious provision practically to the troops, the Services, and in a few cases Europeans in certain places?—Yes. Indeed it is of such definitely limited scope that I have often wondered whether it is necessary to exclude it by name at all—whether it did not really come by implication within the field of the Services and the field of defence; but upon the whole I am convinced that it is better

to make an exclusion *nomination*; but it is exactly that kind of department that we have in mind.

Mr. Morgan Jones.

6684. May I ask whether it does in point of fact involve any ecclesiastical services for civilians who have no relation at all to the Services?—It is difficult for me offhand to give an answer to that question. I will look into it.

6685. I will ask it when my turn comes?—Generally speaking, subject to a few quite minor exceptions, the answer is that it is intended that this Department should be a Department for the Services and for the Army.

Archbishop of Canterbury.

6686. I may take it that the very last thing intended by the Government is any interference on the part of the Governor-General with the internal affairs of any religious community in India?—We have already got sufficient problems with religious communities in India to make it quite certain that we do not want to add to their number, your Grace.

6687. I think that may be taken for granted. Only one more question. You will forgive my ignorance; it may be shared by some who have not had the advantage of Indian administration. Are there any powers now in the possession of the Viceroy analogous to those which are given in the Reserved Departments and the Special Responsibilities?—Yes, at present the Viceroy has full powers over the whole field.

6688. Yes, they are absolute; but in certain matters which would come under Reserved Departments or Special Responsibilities has he not to bring them nominally before the Legislature?—No. He has, of course, to carry his Executive Council with him, but then His Grace will remember that his Council are all nominated and are most of them officials.

6689. In spite of that would you say that in your view the Central Government as constituted by these proposals was as strong as, or perhaps even stronger than, the existing Central Government?—I do not think I could give an answer to a question of that kind;

so many considerations enter into it, and indeed so many factors. From one point of view, it might be urged that the Government was becoming weaker because to a certain extent it was less highly centralised under one single authority; on the other hand it might be urged that it had become stronger because it would very likely obtain behind it greater support of public opinion, and it would be brought perhaps into closer sympathy with the elected Assembly. It is very difficult to weigh up one consideration of that kind against another. My own view, however, is that the kind of Government that we are contemplating under the White Paper will be a strong and effective Government. I think I would prefer not to go further than that.

6690. But assuming the creation of autonomous and more or less responsible Provinces, in the face of them the existing Government, strong as it may be now, would be much weaker than it is now?—I think that is a factor which has got to be taken into account. Obviously with the institution of autonomous Provinces the scope of the Central Government will be considerably narrowed, and in addition to that there will be the further fact that the Central Government will be faced with these presumably strong representative Governments and Assemblies in the Provinces, presumably also with a good deal of public opinion behind them.

[Archbishop of *Canterbury*.] Thank you. That is all I wish to ask you

*(The Witnesses are directed to withdraw.)*

Ordered : That the Committee be adjourned to Tuesday, 18th July, 10.30 o'clock.

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18th July 1933.

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Present :

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl Peel.  
 Viscount Burnham.  
 Lord Ker (Marquess of Lothian).  
 Lord Hardinge of Penshurst.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.

Major Attlee.  
 Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Lord Eustace Percy.  
 Miss Pickford.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
 Nawab Sir Liaquat Hayat-Khan.  
 Sir Akbar Hydari.  
 Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
 Sir P. Pattani.  
 Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.  
 Sir C. P. Ramaswami Aiyar.  
 Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. Rangaswami Iyenger.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Begum Shah Nawaz.  
 Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Tej Bahadur Sapru.  
 Sir Phiroze Sethna.  
 Dr. Shafa' at Ahmad Khan.  
 Sardar Buta Singh.  
 Sir N. N. Sircar.  
 Sir Purshotamdas Thakurdas.  
 Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt. G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

## Marquess of Reading.

6690. Secretary of State, I have a very few matters upon which I want to ask you questions, but will you direct your mind to paragraph 103, only because of its relation to the Governor-General?—I am drawing the distinction between the powers of ordinance in paragraphs 103 and 104, pages 64 and 65, and especially now in reference to the powers of the Governor-General. I just want to draw your attention to those matters. Hitherto, the practice and the law has been that when an Ordinance had to be issued, it was issued by the Governor-General; there was no power in the Governor to issue it. That is the law at present. That is right, is it not?—Yes.

6691. What has happened is that when a Governor required an Ordinance, he communicated with the Governor-General, and if the Governor-General thought right, the Governor-General issued the Ordinance in accordance with the desire of the Governor, varying it as the Governor-General thought necessary, which would then take effect in the Governor's Province?—Yes.

6692. I have in mind, for example, only as an instance when there was the rebellion in Malabar. I think Sir Malcolm Hailey and Sir Tej Bahadur Sapru were both then in the Viceroy's Executive Council; I was Viceroy; and then Ordinances had to be issued proclaiming martial law in different parts with certain conditions which were attached to it. That was done by the Governor-General at the request, of course, in the

first instance, of the Governor of Madras. The only reason of my calling your attention to this is for the purpose of showing that there has been no difficulty in dealing with matters of that character hitherto, notwithstanding that the Governor has not had the power to issue an Ordinance. The point I am trying to make to you is that where the necessity has arisen, the Governor-General has issued the Ordinance for the Governor's Province and the Governor has not suffered by that; he has been able to get the benefit of the Ordinance without issuing it himself. That has been the law, and the practice, up to the present moment, and is still the law and practice. That is right, is it not?—Yes.

6693. Now what I want to ask you to consider in relation to this matter, and certainly I am not pressing you for a final opinion at the moment, is, do you see any real advantage to be gained by giving the power to the Governor to issue an Ordinance, even though it may be only after consultation with the Governor-General?—I just want to put one or two matters to you for your consideration. If the Governor requires an Ordinance, it would be open to him to apply to the Governor-General as he has done hitherto, would it not?—Yes.

6694. If the Governor issues an Ordinance on his own initiative, even though it may be after consultation with the Governor-General, that places him, as I suggest to you, in more direct opposition to his Legislature and to his Ministers than if the Ordinance is issued by the

Governor-General for application to the Province. Does not that follow?—I am not sure that I would agree with that deduction. I would have thought, if it were true, it would be equally true to say that a more acute difference would arise if the difference was a prominent difference between the Governor-General outside and the Province, the Province being responsible for its own Law and Order. I would have thought it would have made the cleavage of opinion more marked.

6695. You always have to bear in mind, do you not, that the Governor-General is ultimately the person responsible, so that whatever happens, he is responsible?—It would be known that the Governor could not issue the Ordinance without the assent of the Governor-General, or, that if he did, it would be in the Governor-General's power to order him to cancel it?—Yes. I am afraid I really have not got anything to add to what I said the other day, namely, that I do not think this is a great question of principle, but it is a question upon which there are legitimate differences of opinion. Upon the whole, I have come to the view that Law and Order being a Provincial subject, it was more appropriate for the Provincial Governor to be given an Ordinance making power.

6696. I do not want to keep up the argument at this stage, because we get no further in it. All I want to direct attention to is these points, so that they may be considered when the matter comes up again for the decision of the Committee?—Certainly.

6697. The point being as I have followed it—I do not know whether I am quite correct—I rather understood that there was an objection on behalf of the Indian Delegates to the power of the Governor to issue an Ordinance under paragraph 103?—I should be very much surprised if there were not differences of opinion amongst the Indian Delegates upon this point, just as there are amongst the British Members of the Committee. It is one of those cases in which I think there is a field for legitimate differences, and it is obviously a matter, as Lord Reading suggests, that we must take into close consideration. Upon the whole, weighing one thing with

another, I think it is better that the Provincial Governor should have this power.

6698. Subject, of course, to the Governor-General?—Yes; that always is assumed.

6699. And subject to consultation with the Governor-General?—Yes, certainly.

6700. And with the consequence, of course, that whatever is done by him must be known to be under the direction or with the assent of the Governor-General. That follows, does it not?—I did deal at some length with all these points the other day, and I would prefer not to add anything to what I said then. I did give answers to almost all these points the other day.

6701. That means that I am putting this to you because of what you said the other day?—Yes; I am perfectly ready to answer any question Lord Reading asks me; but this was a question we did discuss at very great length when we were dealing with the Provinces. I told him that it is a ground upon which there is a justification for legitimate difference of opinion. Upon the whole, I take one view. Apparently, on the whole, he takes a different view.

6702. I prefaced the observation by saying to the Secretary of State that what I wanted him to do was to consider these points, because I understood from him that he was going to consider the whole matter. My sole purpose was to get definitely to him and definitely to the Committee the points for their consideration. I do not want to press it further than I have already done, but I do want to get into the minds of Members of the Committee that there are those matters to be considered. However, there we will leave it. Now, there was one other matter which I wanted to call attention to simply for the purpose of trying to understand it. I gathered from the Secretary of State that in regard to paragraph 4 on page 39, in dealing with the numbers of Rulers of States who would have acceded to the Federation he was considering the question of introducing some system by which there would be weightage. You remember the point?—Yes.

6703. What I want to call your attention to is that you said something like

80 per cent. of the total amount; but, whatever it was, you said that there would be a weightage which would bring up the votes of the Princes, not to the full percentage but to something less than that. I am not sure that 80 per cent. was actually mentioned, although it did arise in the course of the discussion. I only want to ask you one question upon that, because I understood you were considering it and were going to put it before us at a later stage. Why do you draw a distinction between the 100 seats and the 80 per cent.? That is what puzzles me. There are 100 seats, for example, in the Upper Chamber of the 250. Supposing only 50 of the Princes join then only 50 of those seats in the Upper Chamber would be allotted to the Princes, and then there would be 50 for which there would be no representation. I understood you to say that you were considering that, and you were considering the weightage of these Princes which would bring it up to something like 80 per cent. All I wanted to know from you (I just want to understand) is why do you stop at the 80 per cent. of the full numbers. Is there anything in your mind with regard to it?—I have never mentioned any percentage. I never mentioned 80 per cent. the other day. What I did say was that it seemed to me they ought to have some weightage, but not up to the full amount of the 100 per cent.

6704. That is right?—The problem is this: From the State's point of view, and from other points of view as well, it is important that the State vote should have adequate strength behind it. Moreover, it seems to me to be more likely for the other Princes to accede who have not acceded at once if they see that their vote in the Chamber is already carrying adequate weight. When, however, Lord Reading asks me why, that being so, we do not suggest giving the vote its full weightage at once, my answer is that I think that is going too far. I think what one wants to do is to ensure that the Princes who accede will have an adequate vote for making their point of view felt, and for ensuring that they are not swamped by a great majority of votes against them. But I do not think it would be necessary to give the full weightage. I should like to leave some

inducement, at any rate, to the Princes to get the full number of States into the Federal Chamber, and into the Federal Government. On the whole, therefore, I think that some weightage would be reasonable, but a weightage not up to the 100 per cent. I am, however, fully aware of the great difficulties and complexities of this question. What I want to do is to make some kind of reasonable arrangement that I hope will last only for a short time, because I am assuming the 100 per cent. of Princes will come in without undue delay under circumstances in which the Princes will feel that they have got a fair deal, and in which British India will also feel that the Princes have got a not unreasonable arrangement.

Marquess of Reading.] That is all I want to put.

Marquess of Lothian.

6705. Secretary of State, I think it is a characteristic of all Federations that there should be internal free trade. I notice that in Appendix VI, which puts forward the exclusively Federal powers, No. 34 gives exclusively to the Federation "the regulation of the import and export of commodities across the customs frontiers of the Federation, including the imposition and administration of duties thereon." In the exclusively Provincial there is no power to put provincial duties on. Could you tell us what your view is about some limitation being placed on the States, placing customs duties as against the rest of India. I do not include in that States which are already putting on customs duties, because some special arrangement may be made about them, but do you think it would be important that States acceding to the Federation should surrender the power of adding to existing customs duties or imposing new tariffs?—I certainly agree with Lord Lothian that there should be this internal free trade under the Federation, whether it be between one Province and another, or whether it be between one Indian State and another. Lord Lothian will, however, remember that there are treaties with certain of the States that do affect the question of internal free trade. What, however, I can say to him is this, that it would be our desire that

there should be this free trade, and that in the Instruments of Accession we should have constantly to keep this point in mind. Whether there may or may not be exceptions in particular cases must depend on the treaties with the States, and also upon the further fact whether in particular conditions it is worth having a particular State in the Federation at all. I am not thinking of any actual case. I am thinking rather of an imaginary case, but suppose the case in which a State under its existing treaties could impose duties upon imports from British India, and the State offered to join the Federation, and we came to the conclusion that the entry of a State in conditions of that kind would really impinge upon the system of Federation; that, I imagine, would be a case in which we would refuse the application of the State in those conditions; but, speaking generally, we should wish to see as wide an area of free trade within India as we could possibly obtain.

6706. And that should take the form through the Treaties of Accession, or through the Constitution, that no infringements should be made in the future. You may have to make some exceptions under the existing Treaties, but it should be a principle that the alteration of tariffs, or the addition of fresh tariffs, should be impossible?—It appears to me to be difficult to generalise. Our desire is the same, but I would prefer not to give an explicit answer to a question of that kind, having regard to the complexities of these various Treaties of Accession, but our general desire would be to carry out what I feel quite sure Lord Lothian himself wishes.

6707. May I turn to Proposal 41, and the equivalent one under the Governor's Provinces which deals with the Joint Session?—Yes.

6708. It provides that the Governor-General may authorise a Joint Session at any time after three months. I have always felt that there were very grave objections to the immediate or frequent use of the Joint Session for two reasons: One is that where there is quite clearly a majority in a Joint Session, and it becomes clear that the matter will be referred to the Joint Session at an early date it nullifies and

destroys the Debates in both the other Houses. Everybody is considering what is going to happen when the Joint Session takes place. That is, I think, a grave danger to the authority and the prestige of both the Houses. The second is, in my view at any rate, the main function of the Second Chamber is revision and delay, and the Joint Session may nullify delay almost altogether. I am wondering if the Secretary of State could give us the reasons why he has adopted the method of an early Joint Session in preference to the principle which is embodied in the Parliament Act which is that there should be a power of delay, say, for two or three Sessions after which the will of the Lower House prevails. It does give to the Second Chamber the very formidable powers of revision and delay?—The assumption here is that the two Chambers have substantially equal powers. I do not think there is anything irrevocable in the three months. I would like to hear suggestions about it. No doubt there is a great deal in the argument Lord Lothian has just urged. At the same time there is something in the other argument that the sooner you can get a dispute settled between the two Houses the better. I think this is essentially a question upon which we should like to gather the opinions of the Committee.

Marquess of Lothian.] May I now turn to another point? We can discuss these things later. I want to turn now to the provisions under Proposals 28, 31 and 32 for casual vacancies. The question which really arises there is, how far the Princes are to have the power to send and withdraw members of the Legislature absolutely at their will. I imagine that under the ordinary Legislature there is a definite writ of appointment which confers upon the member membership of the Legislature for the duration of the Parliament, and in the ordinary course there are only three ways in which that membership can be terminated: one is by death; the other is by resignation; and the other is by making infringements of the disqualifications which are mentioned in Proposal 34. It has always seemed to me, if the Legislature is to function properly, it is important that the members should be members for the duration of the Parliament.

*Chairman.*] Lord Lothian will perhaps have in mind that the Committee thought it well to reserve Proposals 26 to 37 and that they should be dealt with along with the Franchise and the Legislature.

*Marquess of Lothian.*] If that is so I will ask that question later. That is all I want to ask now.

*Marquess of Zetland.*

6709. My Lord Chairman, I am doubtful myself of the wisdom of the procedure which is proposed for securing what are called the Governor-General's Acts, but if Sir Samuel Hoare thinks that he has covered that question sufficiently when dealing with the kindred case of Governor's Acts in the Provinces, I will not pursue that here. I understand you thought you had really covered that ground?—I thought I had, but I may be wrong.

6710. I will not pursue that. There is only one question I want to ask the Secretary of State, apart from that, and that is this: To what extent will the powers of the Federal Legislature in connection with currency legislation be restricted by the powers which it is proposed to give to the Reserve Bank? The Reserve Bank is to be entrusted with the management of currency and exchange. Would that prevent the Federal Legislature from introducing, say, a Rupee Ratio Bill?—I would prefer, if Lord Zetland would agree, to deal with questions of this kind when we come to discuss the details of the Reserve Bank. There is a Committee at present sitting, and I should hope the Committee will end its deliberations in the course of quite the next few days. I was assuming that when we came to the question of finance, the subject of the Reserve Bank would probably play a prominent part, and that is one of the questions that I feel sure, from my experience of the past, will undoubtedly be raised.

*Marquess of Zetland.*] Very well. I have no more questions.

*Lord Rankeillour.*

6711. Secretary of State, with regard to your consideration of questions of joint sessions and the like, I trust you will not commit yourself to anything

that might prejudice your position with regard to Constitutional Reform in this country?—That is one of my constant troubles. I have always to be looking out of two sides of my head at once.

6712. Quite. The chief ruler in India in his relation to the acceding States will have a dual personality, will he not: as Viceroy and as Governor-General?—Yes.

6713. It would be fair to say, without any vulgar implication, that he will have to lead a double life?—We all have to do that.

6714. I trust not, in the common saying, in the usual sense of the term. In his relation to the extent of the powers that they surrender, the proportions of his divisible personality will be different?—I do not quite follow that anatomical metaphor.

6715. I mean to say, if a State surrenders a small extent of its powers, he might be one-fourth a Governor-General and three-fourths a Viceroy. If the State surrendered half its powers he would be half a Viceroy and half a Governor-General. If the State did not accede he would be a totalitarian Viceroy?—I should like to hear the end of Lord Rankeillour's questions before I attempt to deal with that one.

6716. At any rate, his relations, in one case as Viceroy, would be larger and take a greater scope than in another, according to the terms of accession?—You mean after the accession?

6717. Yes?—Yes, that would be so.

*Sir Austen Chamberlain.*

6718. Is that answer quite correct, Secretary of State? The powers that remain are the powers of paramountcy?—Yes, that is perfectly true, but I think, unless I misunderstood Lord Rankeillour, what he meant was this: One State might surrender such restricted powers to the Federation that the Prince's relations would be almost exclusively in the future with the Viceroy in the field of paramountcy.

*Lord Rankeillour.*

6719. Yes?—Whereas, another State might surrender wider powers to the Federal Government, and to that extent the Prince's relations would be



more extensive with the Federal Government than in the case of the other Prince and more restricted to that extent in the field of paramountcy. Have I made my point clear ?

Sir *Austen Chamberlain.*] Yes, I understand the point, but I cannot see that in practice it will really work out so.

*Lord Eustace Percy.*

6720. Surely, in fact, what the State can concede to the Federation are the powers which are at present moment independent of paramountcy, or limited paramountcy. The State cannot concede to the Federation any part of the paramountcy of the Crown over the State ?—That is perfectly true, but in practice the surrender of powers to the Federal Government must to that extent limit the application of paramountcy. I quite agree that over and above everything is the paramount field, but surely that is the case.

6721. I do not see how a State, by surrendering independent powers which it has to the Federation—powers which, therefore, must be limitations on the paramountcy of the Crown—can affect the scope of the paramountcy of the Crown, but it is a question of abstruse constitutional law, into which I do not think I can follow you ?—I am not sure whether my answer is technically correct or not, but whether it is or not I do not quite see its application to these constitutional questions.

*Marquess of Reading.*

6722. The position exists now, does it not ?—Yes, certainly.

*Marquess of Reading.*] There is the difference between what the Viceroy does as the representative of the King-Emperor and what he does as Governor-General.

*Lord Rankeillour.*] I do not want to put it further than this. Different States will give over different powers, and to the extent to which they vary the relations of the chief ruler, whether as Viceroy or as Governor-General, will be different.

*Sir Akbar Hydari.*

6723. Is it not that the difference will be within very narrow limits because

the Crown will see, before it allows any State to concede, that it concedes the minimum quantum of its powers to the Federation ?—Certainly.

6724. So that the variation will be very little between different States so far as the amount of power that they concede is concerned ?—Certainly.

6725. With regard to the other question which was put by Lord Eustace Percy, is it not that there are certain powers in what will be in future the Federal field which are at present exercised in Indian States by virtue of paramountcy which, however, could not be transferred to Federation responsible to a Legislature, without the Crown transferring that portion with the consent of the State, and to that extent it will be the transfer of really certain paramountcy powers and not purely State powers ?—Through the Crown ?

6726. Through the Crown ?—Yes ; that is so.

*Mr. M. R. Jayaker.*

6727. Does the Secretary of State include in the word "paramountcy" all those powers of the State which are not transferred to the Federal field, or does he put a more limited interpretation on the word "paramountcy" ? Have I made my question clear ?—Just repeat it, will you, please.

*Mr. M. R. Jayaker.*] Do you include in the word "paramountcy" all those powers of Indian States which they possess at the present moment which are not transferred to the Federal field and to the Federal Government ?

*Rao Bahadur Sir Krishnamu Chari.*] Do you mean the powers of the Indian States or the powers over the Indian States ?

*Mr. M. R. Jayaker.*] The powers of the Indian States.

*Rao Bahadur Sir Krishnama Chari.*] Which the Indian States exercise.

*Mr. M. R. Jayaker.*

6728. Yes. Have I made my question clear ?—This is a very technical field, and I think I would like to consider my answer to Mr. Jayaker's question. I will take note of it, and I will either give the Committee or send my answer

when I have thought it over, but off-hand, in these very technical legal and Constitutional questions, I would prefer to think about the answer.

Sir Hari Singh Gour.] In connection with what fell from Sir Akbar Hydari, to which the Secretary of State either expressly or impliedly gave his assent, Sir Akbar Hydari said that with regard to the domain of paramountcy, when the Crown transfers its paramount power with the consent of the States, a certain result would follow. Does the Secretary of State imply that the Crown cannot transfer any of its paramount powers except with the assent of the States?

Sir Akbar Hydari.] To the Federation.

Sir Hari Singh Gour.] To anybody. The right of the Crown to transfer the power is unconditional and unqualified.

Witness.] It may be unqualified, but, at the same time, there has never been any question of the Crown acting in that way under these Federal proposals without the agreement of the State.

Sir Tej Bahadur Sapru.

6729. My Lord Chairman, may I, to clear up one point, put one question on this to Sir Samuel Hoare? Sir Samuel, is it not the position that to the extent to which certain powers are surrendered or delegated by the Indian States to the Federation, to that extent paramountcy ceases? Supposing an Indian State federates in regard to 40 subjects out of 49, then I take it that the Crown will not be able to exercise any power of paramountcy over those 40 subjects, the complete powers having been transferred to the Federation?—That is so; the transfer has been made with the consent of the Crown and the States concerned.

Sir C. P. Ramaswami Aiyar.

6730. May I just put one question? Is it not a fact that at the present moment the relations of the Viceroy with an Indian State cover practically all the relations that appertain to the State's relations outside itself? In other words, does not the Viceroy exercise the totality of what you would call the foreign relations of a State at the present moment?

Chairman.

6731. I would suggest that the Committee and the Delegation should reserve this matter until we see what the Secretary of State puts into his considered answer which he has undertaken to give. We will refer to that later?—I can answer that question in a sentence. The Governor-General-in-Council, under present conditions.

Lord Rankeillour.

6732. Might I just call your attention to No. 23 of the Introduction? It reads: "Although the Reserved Departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these Departments in isolation from the other activities of his Government." Would it not really be in practice the same with regard to State affairs? Could the Governor-General, as Governor-General, keep to his position as to State affairs and not take counsel with his Government in his capacity as Viceroy occasionally?—I think, certainly so; I think he could.

6733. But there would be a number of things in which a State had given its powers over in which, obviously, the Governor-General as the head of the Federation and his Government would be concerned, but, surely, they might be impinged upon by things that were happening in the States at the same time, which would necessarily have to be taken account of?—The Viceroy must be the sole judge.

6734. But in practice, would it not be exceedingly difficult not to take his Government into consultation in those matters?—The Government, it will be remembered, will be composed of representatives both of British-India and the Indian States.

6735. But, perhaps, I might ask you to look at the bottom of page 15; it says there: "It may be, however, that measures are proposed by the Federal Government, acting within its Constitutional rights in relation to a Federal subject, or in relation to a subject not directly affecting the States at all, which, if pursued to a conclusion, would affect prejudicially rights of a State in

relation to which that State had transferred no jurisdiction. Or, again, policies might be proposed or events arise in a Province which would tend to prejudice the rights of a neighbouring State." Would it not in practice happen that the proceedings of a State in its independent capacity would react upon the Indian Legislature and Government, and that, therefore, they would have to take account of them?—No, I do not think necessarily so. There, as Lord Rankeillour said at the beginning of his questions, is the Viceroy in his two capacities: the Viceroy in his relation to the States in the field of paramountcy, and Governor-General of the Indian Federation. He must judge. Speaking, however, generally, we have always assumed that the Federal Government and the Federal Legislature would not interfere in the field of paramountcy at all.

6736. But questions might arise, for instance, questions of extradition, possibly, which might excite keen feeling in British-India. Would not that react on the Legislature and the Government?—It is very difficult to deal with hypothetical cases of that kind.

6737. There have been occasionally drastic interventions by the paramount power in the case of individual States, and that also might excite considerable feeling in British-India?—It is conceivable that it might, but, speaking generally, the clearer the distinction between the field of paramountcy and the field of Federal Government, the better, I believe, it will be for everybody.

6738. But do you not think it is possible that this sort of thing might happen: It might be intimated to the Governor-General that things would go easier in the Legislature if the Viceroy took a different line with regard to some particular State?—Then he must use his discretion.

6739. But whether he uses his discretion rightly or not, there undoubtedly would and could be pressure, even to the point of the resignation of the Government?—I do not think so.

Marquess of *Salisbury*.

6740. Why does the Secretary of State say he does not think so? It is obviously

possible?—I cannot picture to myself the case upon which a situation of that kind is going to arise.

6741. Pressure in discussion upon the Governor-General which impinges upon the domain of the Viceroy?—But discussion of that kind is barred from the Legislature.

6742. Is it absolutely barred?—Subject to one exception. If Lord Salisbury will look at page 51, paragraph 52, he will see that discussion of that kind is barred without the Viceroy's previous sanction.

Lord *Rankeillour*.] I was just coming to paragraph 52—that is paragraph 52 (b) (i), a little way down page 51, in matters connected with any Indian State, apparently, the discussion is barred, but supposing the matter was just as much connected with British-India as a whole or with one Province, would the discussion then be barred? Does this mean matters solely connected with an Indian State? If some Frontier question or some question of smuggling of arms came on that affected the Province as much as the State, would discussion be barred?

Viscount *Burnham*.

6743. Take the recent case of Kashmir?—What about it there?

6744. The excitement that there was on the part of the Muslim population, whether justified or not I am not entering upon, but the excitement there was in British-India in the disturbances in Kashmir?—The movement of British subjects into Kashmir, that would be a question, I assume, for discussion, and intervention, if necessary, but I do not see the other side of the picture.

Lord *Rankeillour*.

6745. What I mean is, if it was connected with any Indian State, would the Speaker have to rule that out, however much the matter may equally be connected with the Federation or with a Province?—It would have to depend upon the Rules of Business. The Rules of Business would have to make it quite clear that, on the one hand, the internal affairs of the States could not be discussed, and, on the other hand, the interests of British-India or of a particular Province of British-India could be discussed.

6746. It would be very difficult not, perhaps, to dwell upon the bad Government in the State that had allowed these things to happen, would it not?—I do not think so.

6747. Would it not be very difficult for the Speaker to draw the line?—It is just the same problem that we have to face now.

6748. And it is very difficult for the Speaker to have to draw the line?—It may be difficult, but I do not think it is insurmountable.

Earl of Derby.] He does it.

Lord Rankeillour.

6749. It would be far more complicated in this matter. Do you not think, speaking generally, there is a danger, as in Germany, that there would be a steady attempt at encroachment by the Federal Government on the positions of the Indian States?—I think in the future there is likely to be a much greater encroachment if the Government continues in which the representatives of the States do not take a part.

6750. You recognise there is a danger; and in Germany it has been pursued to a great length?—There is a danger in every course, but the danger is, I think, greater, looking to the future, for the States left outside in an isolated position, and with the constant risk of encroachment from British-India without themselves being represented in the All-India Government or in the All-India Legislature.

6751. I quite see that, but there is a danger. Now I think you said that there was no example of the kind of Federation that is now contemplated. I suppose you meant of States coming in with different powers—greater or less powers?—I did not mean only that, but I did mean generally that the conditions in India are very different from the conditions in any other Federation in the world.

6752. I suppose it is not possible at this stage to say what minimum powers the Government of India would require before acceding to Federation—the proposals for any particular State?—I could not say it this morning.

Sir Austen Chamberlain.

6753. May I interpose a question? Does that mean, Secretary of State, that you would be willing later to give some guidance to the Committee and the Delegates upon that point?—Yes, but with this reservation, that I think it will be very difficult to make a cut and dried selection from the list of Federal powers, which we regard as Federal and upon which we hope the Princes will accede; but there must always be some variety in the Instruments of Accession, and in actual practice the only test will have to be whether the conditions are reasonable or not reasonable, and whether the State concerned is really surrendering a sufficiently effective part of its powers for the purpose of the Federation. But I think, certainly, at some period in our discussions, I could give within those limitations a general picture of the kind of powers that we should expect the majority of them to surrender.

Sir Austen Chamberlain.] I only asked at this point, Lord Rankeillour, because I had intended to put some questions, and if the Secretary of State is going to give us a considered opinion later, I do not want to put my questions to-day.

Lord Rankeillour.

6754. Quite. Once the Instrument of Accession has been executed, can it be changed by treaty?—Only with the consent of the parties concerned.

6755. Without any amendment of the Constitution Act, it could be changed by treaty?—Could Lord Rankeillour give me a specific case?

6756. What I was thinking of was if the surrender of some power, or the fact that some power not surrendered, worked inconveniently, could that power be surrendered or withdrawn by mutual consent later?—Certainly.

6757. Then is that what is contemplated by the words "or otherwise," at the beginning of Section 3 on page 38?—This is one of the very few vague words in the White Paper, and I think we have got to make it more explicit.

6758. You rather contemplate some subsequent transaction of the nature suggested, do you?—I will look into this

point, I think, with my advisers, and see if we can make a more explicit proposal.

6759. I suppose the Legislature would have something to say to any change of the Instrument of Accession or any subsequent transaction of this kind?—Not to the Instrument of Accession, in the first instance.

6760. No, but afterwards?—Yes, I think, certainly, it would have to.

6761. Now may I ask you just one question again about the Instrument of Instructions, about the Parliamentary position? I do not want to go over it again, but could it not be brought in by a positive Prayer, just like the Proclamation? It is in No. 9, the draft about being laid on the table of both Houses of Parliament. I am talking about the Governor-General's Instructions. Could that not be done by the process in 4 (b) about the Proclamation, so as to make sure that Parliament has a definite opportunity of expressing its opinion? Could not that be assimilated?—I would hesitate to give an answer about Procedure to Lord Rankeillour. I would, however, have thought that there was a difference, really, if not in Procedure, but anyhow in fact, between a Proclamation bringing a great Constitution Act into operation and the Governor's Instructions, and I would have thought the Procedure that we propose is really the more suitable. We do not in any way propose it in order that the Instructions should be passed through without full discussion and the approval of Parliament, but we do think it is a more appropriate kind of Procedure.

Lord Rankeillour.] I understood that the reason of the framing of No. 9 in the way that it is framed was to make sure that there was no possible impingement upon the prerogative of the Crown. The same end would be obtained, and that would be safeguarded, by adopting the procedure of 4 (b), would it not? I do not want to press it now.

Archbishop of *Canterbury*.

6762. May I suggest about this, surely the procedure by Address is a procedure praying that such and such a thing be done, not contemplating any sort of amendment to the purpose for which the prayer is issued. That is 4 (b), whereas

in proposal 9 with regard to the Governor-General's Instrument of Instructions it is desirable that opportunity should be made of amendment or of discussion, therefore the range and object of the two procedures is quite different?—I think it is a question of procedure. My own view is that the procedure we propose is more appropriate to the circumstances.

Marquess of *Salisbury*.

6763. The Secretary of State will remember will he not, that he has been most kind as to say that he will lay before us a model in some form of an Instrument of Instructions?—What I said was that it was quite impossible for me to lay any such model before the Committee until I know what the Committee wish put into the Instructions. What I will do, and what I said I will do, is to put in to the Committee a Memorandum about this procedure by Instructions dealing with certain of the points and criticisms that have been raised in our discussions.

Marquess of *Salisbury*.] We shall be very much obliged.

Sir *Austén Chamberlain*.

6764. Is not the real distinction between the two cases that the Address to the Crown to bring the Act into force can arise on only a single occasion, and is final, whereas the consideration of Instructions may occur at intervals: In other words, that the Instructions may need to be varied from time to time?—That is exactly the reason that made us prefer the proposals in the White Paper.

Lord *Rankeillour*.

6765. What I wanted to secure was that the word "representation" was not to be narrowly interpreted as a barren or futile representation?—We have no such intention.

6766. As long as that is corrected. About the transitory provisions——?—We are coming to them later.

Lord *Rankeillour*.] Very well. There is only one other thing: I think I raised it myself; that is about discrimination. I suggested that there might be a qualification for certain appointments (it was

then provincial, but the same thing applies here) which would, in fact, be discrimination, for instance, that somebody had to be educated at a particular University, or the like, and I think you said that was really covered by the provisions as to discrimination. I confess I cannot find where that is—it is the question of an appointment which depended on a certain qualification which might not be, on the face of it, discriminatory.

*Chairman.*

6767. Could that be looked into and dealt with later, Secretary of State, if you have difficulty in finding it now?—We have put it down, as you know, my Lord Chairman, for a later chapter. I do not mind.

*Lord Rankeillour.*

6768. I think it really arises, or is illustrated, by a note on page 70 as to the registration of medical practitioners. I do not know how that has been dealt with?—I would much rather deal with a question of that kind, with the question of discrimination generally.

*Lord Rankeillour.]* Very well, then I will not press it.

*Major Cadogan.]* I have only one question to ask, if it has not been asked before, on paragraph 29 on page 44. I understand that, as far as the representation of British India is concerned, there will be a maximum of 250 constituencies returning members to the Assembly.

*Chairman.]* I think we had better hold to our arrangement to leave paragraphs 26 to 37 to be dealt with under Franchise.

*Major Cadogan.]* I beg your pardon. I have no questions.

*Sir Joseph Nall.*

6769. I understand the Secretary of State to say it is the fact that matters which it is proposed will be dealt with by the Federation, in so far as they are dealt with by the Government of India to-day, the Council of Princes considers, or from time to time makes representations on those subjects, if all or any of the States are immediately concerned in

what is proposed. Is that so?—I did not understand the question.

6770. Does the Chamber of Princes as it exists to-day from time to time make representations on any matter or act of the Government of India which is deemed to affect all or any of the States?—I do not think that is the state of affairs.

6771. What does the Chamber of Princes do to-day?—The Chamber of Princes discusses questions that concern the States members of the Chamber, and from time to time it takes Resolutions to the Viceroy. Perhaps the representatives of the Princes will correct me in my answer. I do not recall any case in which the Chamber of Princes has intervened in a question under discussion by the Assembly.

*Sir Tej Bahadur Sapru.]* Never.

*Sir Joseph Nall.*

6772. Is it a fact that the matters for which the Chamber of Princes was instituted will now be the business of the proposed Federal Legislature?—No, one certainly could not give an affirmative answer to a question of that kind.

6773. Is it contemplated that the Chamber of Princes will still separately exist?—We do not deal with it in our proposals at all. I think that is very much a question for the Princes themselves as to whether they require an organisation of their own outside the Federation or not. It does not come into the Federation.

*Lord Hardinge of Penshurst.*

6774. Surely the Chamber of Princes has no Constitutional provision at all, has it?—No; Lord Hardinge is quite correct.

*Sir Tej Bahadur Sapru.*

6775. No, and no legislative powers?—And no legislative powers.

*Sir Joseph Nall.*

6776. I wanted to know whether the matters for which it was instituted will be transferred to the Federal Legislature. The answer is No. I ask in that case: Will that Chamber continue to deal with

matters with which it was formerly dealing?—We do not include any proposal about the Chamber in the White Paper proposals at all.

Lord Irwin.] Would it help Sir Joseph Nall if the Secretary of State supplied the Committee with a copy of the Constitution under which the Chamber of Princes work which shows exactly what their functions are? They are advisory, but what they work for is there laid down, and is a charter of their work.

Sir Joseph Nall.] I am much obliged. I have seen it. Is that Chamber to continue, or is it not?

Sir Akbar Hydari.

6777. Are there any questions other than those which will be transferred to the Federal field, for instance, questions which would remain under paramountcy, and which would still remain to be a matter of discussion between the Indian States and the Viceroy, and for which the States which have acceded might find the Chamber more suitable?—I think that may be so.

6778. I am suggesting that the usefulness of the Chamber, whatever it is, will not come to an end merely because certain subjects have been transferred from the paramountcy of the Crown to the Federal Government?—That is so.

Sir Joseph Nall.

6779. I do not want a discussion on this. I have merely asked for the Secretary of State's views so far as they are available. It is proposed is it not, that the States will appoint members to both Houses of the Federal Legislature?—Yes.

6780. And that both Houses will have equal powers in the field of finance whatever those powers may be?—Substantially so.

6781. Arising from Lord Lothian's question, as both Houses would have equal powers in the field of finance, powers of delay would entirely frustrate the scheme. Is that so?—That is one of the reasons that prompted us to adopt the proposal of a Joint Session.

Sir Joseph Nall.] Is it conceivable that if both Houses are to have equal powers, especially in the field of finance, any

powers of delay could be given to one House over the other?

Mr. Rangaswami Iyengar.

6782. Is not the procedure with regard to money bills of a special kind so as to expedite the passage of supply?—Mr. Iyengar is quite correct. Delay is quite impossible in the case of a budget.

Sir Joseph Nall.

6783. Does the White Paper perpetuate or alter the existing fiscal convention?—No, it leaves the position substantially as it is now.

Sir Reginald Craddock.

6784. I would like to ask the Secretary of State just one or two questions which arise in practical administration. I have myself experience of cases in which there is a dispute between two Provinces, and also between a Province and a State. In the event of such disputes would the Federal Government exercise any authority at all about the question in dispute? It may arise, for example, about the smuggling of drugs over the border from a State into a Province, or even sometimes from a Province into another Province in which representations have apparently produced no results. Does the Federal Government exercise any sort of influence over matters of those disputes?—I am quite ready to take up this question with Sir Reginald Craddock, but you will observe that you have in the agenda put down as one of the subheads "administrative relations between the units." This is essentially one of those questions.

6785. Yes; I have looked through those, and I did not see anything that bore on this point, but I will keep it over till then?—That is one of the questions I expected to be raised under that subhead. I will deal with it then.

Sir Reginald Craddock.] I have no other questions.

Mr. Davidson.

6786. Secretary of State, there have been one or two questions arising on the subject of the States accession to Federation. Is it your view that all States, whether large or small, will be dealt with individually on the basis of their Treaty rights?—Yes, certainly.

Lord *Eustace Percy*.

6787. Secretary of State, when a question was put by Lord Salisbury last time you seemed to agree that it was possible that one of the Governor-General's Ministers would vote against the Governor-General in a discussion in the Chamber. Is that, in fact, conceivable?—I do not recall any answer I gave that seemed to imply that.

6788. Lord Salisbury raised the point (I think I am correct) of what would happen supposing the Minister of Finance voted for a Resolution proposed in the Chamber to the effect that the expenditure on the Army was too high, and you accepted the assumption. Do you think, in fact—?—Just let me stop, Lord Eustace. What was his case that he gave me?

6789. The case, I think, put by Lord Salisbury was that a Resolution was proposed in the Chamber to the effect that the cost of the Army was too high?—Yes.

6790. And that the responsible Ministers voted for the Resolution?—Yes.

6791. Do you think that, in fact, it is conceivable that the responsible Ministers should vote against the policy of one of the Reserved Departments, and yet remain Ministers?—No; in fact, speaking as a politician of some experience, I would say it would seem to me to be impossible.

Lord *Eustace Percy*.] On the analogy of the present dyarchical system in the Provinces has there ever been a case, so far as you know, where one of the Ministers of the Transferred Departments has voted in favour of a hostile Resolution moved in respect of one of the Reserved Departments?

Sir *A. P. Patro*.

6792. There are many cases?—What would Sir Malcolm Hailey say about that? (Sir *Malcolm Hailey*.) I believe there have been such cases. Usually the Convention is that when there is a Resolution which in a pronounced form attacks the reserved half the Minister does refrain from voting on it. That is the usual convention, but I believe there have been cases in which the Ministers have voted in a way that substantively did amount to a vote

against a Reserved Department. That is by a convention always avoided. I think that is the experience of practically everyone here.

Sir *Tej Bahadur Sapru*.] That is so.

Lord *Eustace Percy*.

6793. Would I be correct in saying that, in practice, the scheme at the Centre under the White Paper will not work unless the responsible Ministers do, in fact, support the policy of the Government, as a whole, both the Reserved and the Transferred Departments?—I do not think I could go quite as far as to make an affirmative answer to a very general question of that kind.

Marquess of *Salisbury*.] *Ex hypothesi*, the Ministers are not responsible for this particular thing. That is the distinction which Lord Percy has not appreciated.

Lord *Eustace Percy*.

6794. I perfectly appreciate that distinction. I also appreciate that in English history Ministers were held responsible by Parliament for acts which were certainly within the Prerogative of the Crown, and that is how the doctrine of responsibility actually arose. May I put a concrete case. Under the White Paper the whole financial proposals of the Government have to be laid before the Chamber in one budget. I think that is so, is it not? A statement has to be laid before the Chamber?—(Sir *Samuel Hoare*.) Yes.

6795. That must be laid by the responsible finance Minister?—Yes.

6796. Is it conceivable that the responsible finance Minister should disclaim responsibility for any of the items in that budget?—I would hope not, and I would certainly say that if the Government was in pronounced opposition to the Governor-General a crisis would have arisen, and the various stages that we have discussed would then come into operation. I cannot myself imagine a situation continuing in which the Governor-General is in pronounced opposition to his Ministry, and his Ministry in pronounced opposition to the Governor-General.



Marquess of *Salisbury*.

6797. It is clear that one or the other would have to give way, is it not?—I think it is.

6798. Surely it would be the Governor-General?—I would say not.

Marquess of *Zetland*.

6799. Surely it would be open to the Minister when he laid the statement before the Chamber to say that he accepted no responsibility for the expenditure on the Army. That would be merely stating the facts?—It is because of that that I refused to give a general answer, yes or no, to Lord Eustace's very general question. I would restrict myself to saying that when there is pronounced opposition (I lay particular emphasis on the words "pronounced opposition") between the Government and the Governor-General, then those stages that we discussed the other day come into operation.

Lord *Eustace Percy*.

6800. I am anxious to get what is the assumption. Just now Lord Salisbury said, and I think you indicated agreement, that one or other would have to give way, whereas on Lord Zetland's assumption neither side would have to give way, and the question really is whether the system will work on a purely dyarchical principle, or whether, in fact, the Councillors and the Ministers will have to be in substantial agreement in presenting the budget to the Legislature?—I do not think I have anything to add to what I have just answered. It is a question very much of degree. If the disagreement is not on a big scale between the Governor-General and one of his Ministers, or the Ministry collectively, then a crisis may not arise at all. There may be expedients for getting over it without a direct breach between them. If, on the other hand, the crisis is a serious one, then we feel we have made provision for meeting it in the White Paper proposals.

Lord *Eustace Percy*.] While I do not want to press you, I do want to ask you to consider the fact that the Finance Minister in presenting the Budget will be presenting the Budget for taxation, about one half of which

at least will be required for the Army. Is it conceivable that the Finance Minister can disclaim responsibility for one half of his proposals for taxation on the ground that they are intended to meet an object for which he has no responsibility:

Marquess of *Zetland*.] They are not votable.

Lord *Eustace Percy*.] They may not be votable, but the taxation is.

*Witness*.] I think I have made my general position clear.

Sir *Austen Chamberlain*.

6801. Just for one moment continuing on the same subject, Sir Samuel Hoare, should I be right in assuming that, although you hope the Government would be in sufficient harmony with the Governor-General, to defend his acts if occasion arose, you do not feel that under the Constitution they can be held responsible for subjects which are strictly reserved to the Governor-General's discretion?—No. The field of responsibility is clearly marked out between the two sides of Government.

6802. It would therefore be possible, and quite proper, for a Minister or a Government to say that they had no responsibility for that part of the Budget which embodied the military expense?—Certainly; and in any case there is going to be no voting on it.

6803. And the crisis would arise if the Government obstructed the Governor-General in the execution of his responsibility, rather than if they merely differed from him or explained that they were not responsible?—Yes, that would be so.

6804. And if they became obstructive, then the various safeguards of which you have spoken would come into play in such order and in such form as the Governor-General thought requisite at the time?—Yes.

6805. Now I want to turn to quite a different subject: to revert for a moment to the powers of the Governor-General to legislate or to issue ordinances, but for the purpose of raising a point which I think has not been discussed?—Yes.

6806. As I understand it, if the Governor-General legislates or issues an

ordinance, that legislation or ordinance is only variable or revocable by the Governor-General himself?—Yes.

6807. If he chooses to legislate there is no check on his authority, apart from the general control of the Secretary of State, except his power in his discretion to reserve the law for His Majesty's assent or the power reserved by Proposal 40 to His Majesty in Council to disallow any law within 12 months?—Yes.

6808. If he acts by ordinance and requires his ordinance for any period beyond six months, quite a different system is introduced by the White Paper. The extension of the ordinance beyond the period of six months must then be approved by an Address from both Houses of this Parliament?—Yes.

6809. Does it not seem to you paradoxical that an ordinance which is temporary should require the assent of Parliament, whilst that Parliamentary assent is not thought necessary to be expressed when he passes legislation which may be permanent? In other words, why do you require the assent of Parliament to a Governor-General's ordinance when you do not feel it necessary in respect of his legislation?—I think Sir Austen has drawn attention to what may appear to be an anomaly. I do not think I have got a very good answer to his question.

6810. Thank you. I will leave it at that. Of course, if the Secretary of State wants to add anything after consideration, I shall be very glad to hear that, and perhaps you, my Lord Chairman, will allow that at another sitting. For the moment I do not want to put any further questions.

Earl of Derby.

6811. I would like to ask two questions clearing up points which have been asked before. I quite understand that the question of the Army is a non-votable question, but, at the same time, the money to pay for it is votable. Is not that so? The taxation necessary to find the money is votable?—Yes; you mean the taxes are votable?

6812. The taxes are votable?—Yes.

6813. Supposing the Assembly said: "We will not put on the taxation that

is necessary to find the money to pay for the Army," what is the procedure then?—The Viceroy then has powers under Proposal 53 of adding such taxation as he thinks necessary.

6814. The only other question that I want to ask is about the two Houses. It is a different procedure from ours?—Yes.

6815. In this country the House of Lords has no power to amend or in any way interfere with a Money Bill?—That is so.

6816. In the new Constitution the Upper House will have that power. It will have similar powers to those of the Lower House?—Yes.

6817. What will happen, then, in the case of the Upper House amending we will say, in the first instance, a Money Bill coming from the Lower House, which amendment the Lower House refuses to accept?—Then you have a joint session.

6818. And that must be, according to your present proposal, within six months of that happening?—In the case of the Budget, it can be done at once. In other cases we contemplate that there would be a period of delay.

6819. You say it can be done at once. That must be with the consent of the two Houses?—No, the Governor-General can order it.

Archbishop of Canterbury.] It is Clause 41.

Earl of Derby.] Thank you.

Lord Hutchison of Montrose.

6820. In relation to the Federation of Princes, is it contemplated that those Princes who do not federate may come into the Federation at a later date on the same terms as those who originally federate?—It is very difficult to say "on the same terms" because I am not quite clear what Lord Hutchison means by the "same terms." If he means that they will come upon individual Treaties of Accession just as the other Princes have entered by individual Treaties of Accession, my answer is Yes.

6821. The reason I asked that question was that if the terms are going to be the same it would have a tendency, would it not, to allow the Princes to remain out until they saw how things

moved?—I do not think you can have a rising scale very well in practice. What you can do is, you can have your Instruments of Accession and the Viceroy must judge with future accessions if the terms are reasonable.

6822. Do you contemplate the Princes of States which federate sitting in the Chamber of Princes?—Do I contemplate what?

6823. Would the Princes who agree to federate continue to sit in the Chamber of Princes?—I myself do not know whether the Chamber of Princes will go on or whether it will not go on. That is very much a matter for the Princes themselves. We have not included anything about the Chamber of Princes in our scheme.

*Mr. F. S. Cocks.*

6824. Regarding the Instruments of Accession of the Indian States is it intended to make every effort that there should be a common uniform agreed list of subjects transferred?—Yes, certainly.

6825. Will States' Representatives be entitled to vote on Federal matters which Their Highnesses have not transferred?—This is an aspect of the question we discussed at some length the other day, namely, the in-and-out idea of voting, and I have really nothing to add to what I said then, namely, that I believe you must allow it to be dealt with by Convention. I believe in actual practice the States will neither wish to intervene in the internal British Indian affairs nor will they so intervene. At the same time, it is very difficult to make a cut-aid-dried definition, saying when they can vote and when they cannot vote, and the particular difficulty is the difficulty of votes of want of confidence in the Government, and votes which, although they may not be actually votes of want of confidence, yet would undermine the existence of a Government in which the Princes themselves are directly represented.

6826. Outside those two classes of questions you think a Convention should be recognised that Indian States should not vote upon purely British Indian matters?—I think that is what is going to happen.

6827. Under Proposal 12 I understand that those three Counsellors for the Re-

served Departments will be ex-officio members of the Legislature with the right to speak but not to vote?—Yes.

6828. Will they be members of the Cabinet or of the Ministry—of the Government?—Constitutionally they will be responsible to the Governor-General, whereas the Ministry constitutionally will be responsible to the Legislature. There is, therefore, that distinction between the two kinds of Ministers. I believe, in actual practice, they will cooperate closely together and there will not be this gulf between the two branches of Government; but constitutionally their responsibilities will be quite distinct.

6829. Will they sit together at Cabinet meetings?—It will rest at the discretion of the Governor-General. I imagine in actual practice they will tend more and more to sit together, but that does not in any way impinge upon their actual responsibility and upon the discretion of the Governor-General to conduct his business as he wishes.

*Mr. M. R. Jayaker.*

6830. Will the Instrument of Instructions to the Governor-General contain any indication that he ought to make the two halves sit together?—I should certainly hope that the Instrument of Instructions would include paragraphs drawing the attention of the Governor-General to the great advantage of working the two sides of Government in as close and sympathetic co-operation as is possible.

*Mr. F. S. Cocks.*

6831. In view of the statement on page 13 of the White Paper, that the Governor-General should encourage joint deliberation between himself, his Counsellors and his Ministers on various questions, particularly Defence, would it not be advisable to set up a Cabinet Committee on Defence which the Counsellors should attend and which would discuss the Army Estimates and work out a joint policy with regard to the Indianisation of the Army?—I do not think here we can possibly go into such questions as whether Cabinet Committees are to be set up for a particular purpose or not. Our desire is, and we do state it in the White Paper proposals,

that the Government should be consulted about Defence expenditure before the Budget is introduced. That again does not impinge upon the Governor-General's exclusive responsibility, but that is the way in which we hope the Government will actually be carried on, assuming a certain amount of commonsense and goodwill on both sides.

6832. Under Proposal 17 the Governor-General is to be entirely at his discretion to appoint a Financial Adviser. Is this appointment contemplated as a practical certainty or merely as a possibility?—May we leave this question until we come to deal with finance? It is one of the important questions in that field.

Mr. *F. S. Cocks.*] Very well. There are one or two questions I would like to ask the Secretary of State on Proposal 18. If these questions have not been asked I would like to ask them now. Under 18 (c), the safeguarding of the legitimate interests of the minorities, do you not think that that might be more closely defined? There was a suggestion, if I may return to the suggestion of Dr. Ambedkar, which he put forward at a previous meeting, which was the addition of the words, "in the matter of adequate provision for education, entry into public services and representation on public bodies."

Marquess of *Salisbury.*] What paragraph?

Mr. *F. S. Cocks.*] 18 (c), page 41.

*Witness.*] I have given a number of answers to similar questions. My view is that it would be a mistake to make these definitions more explicit. The more explicit we make them, the more we shall add more and more conditions to them, and even at the end of it we may find that the definition is really inadequate for a particular situation that may arise.

6833. What exactly does "commercial discrimination" mean in paragraph (e)? Is it a discrimination between one industry and another?—Are we not going to deal with that later on? It is one of the sub-heads; the Committee agreed to take it as a sub-head.

6834. Under (g): "any matter which affects the administration of any Department under the direction and control of

the Governor-General." Does that mean that the Governor-General will be able to interfere with a transferred Department on the ground that it is affecting one of the Reserved Departments?—Yes.

6835. Under 39, the Governor-General having the power to withhold his assent, is that confined to measures which he considered would be a menace to peace and order, or can he refuse to accept a Bill merely because he, personally, does not like it?—This is the usual Constitutional power that is inherent here in the Crown.

6836. Will he have to get the consent of the Secretary of State?—It does not necessarily follow that he would have to get the previous assent of the Secretary of State, but he acts at his discretion, and that means he acts under responsibility to the Secretary of State.

6837. Under 40: "Any Act assented to by the Governor-General will within 12 months be subject to disallowance by His Majesty in Council." As a matter of practice, any measure to which the Governor-General has given his assent, has already been assented to by the British Cabinet also, has it not?—No. I am not assuming that every proposal in the Indian Federal Legislature comes up to the Cabinet here; I cannot imagine any state of affairs like that at all.

6838. I was wondering if that was the case, why the Governor-General should have the power to alter his decision in 12 months, or when a new Government comes in. This clause has been previously in the Constitutions of the other Dominions, but has been abrogated by the Statute of Westminster, has it not?—I think that is the case, but I could not give an informed answer. I think it is so.

6839. If that is the case, is there any special reason why it should be?—I should have thought it was rather a good reason for putting it in, if it has been put into all these other British Empire Constitutions in the past.

6840. Under 52 (b) (iii), does this mean that the Governor-General can prevent any question being asked, or any debate taking place on foreign affairs?—Yes.

6841. Do you not consider that that is a rather stiff limitation of the rights of self-expression on the part of Indian Members of Parliament?—I think a provision of this kind is essential, but the two fields of responsibility are to be preserved. No doubt, there will be, I hope, a lot of common sense applied to the way in which provisions of this kind are actually carried into effect. For instance, the Governor-General can, no doubt, deal in his Instructions about business with the way in which they should be dealt with, but somewhere or other there must be a provision in the Constitution Act under which the Governor-General will be able to prevent debates that will do injury to the activities of the Departments for which he himself is responsible.

6842. Secretary of State, there is one question which I think comes under this Section. You know that at the Round Table Conference on the 1st December, 1931, the Prime Minister said that these safeguards were for the purpose of a period of transition, and he said that: "In such statutory safeguards as may be made for meeting the needs of the transitional period it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government." What I want to ask you is this: Does this proposed Constitution anywhere contain the seed of growth of development by which India can pass out of the transitional period to the period of full responsibility, but must every alteration of the future, however slight, have to come before the British Parliament?—I should have thought the whole basis of these proposals was a basis of development. What I imagine, anyhow what I hope will happen, will be that the two sides of the Government will work closely and sympathetically together, that year by year the Governor-General and the Governor will have less and less reason to intervene in the field of his special responsibilities, owing to the fact that the Ministries themselves will be ensuring that the rights contemplated in the field of special responsibilities are safeguarded, and that, just

as in other parts of the Empire, as the Governments develop, so powers of that kind fall into desuetude, not because the powers are unnecessary, but because the Ministries themselves carry those powers into effect, and I hope and believe that that is what is going to happen in India. In course of time, other Acts of Parliament will be necessary, necessary more to recognise a state of affairs that is in existence than to make actually new changes. That is the way I hope and believe the kind of Constitution that we are discussing is going to work in the case of India.

*Sir Tej Bahadur Sapru.*

6843. May I add one question: Have you made that statement, Sir Samuel, with reference to special responsibility or also with reference to Reserved Subjects, because I can understand his special responsibilities falling into desuetude at some time or other, but can the provisions with regard to Reserved Departments so fall into desuetude when there is a statutory provision by Act of Parliament?—My general answer covers both those fields of development, although in actual practice the development will be upon different lines. In the case of the Reserved Departments, taking in particular by far the most important case, the case of Indian Defence, I have always thought that the problem of Indian Defence depends, to a great extent, upon the Indianisation of Indian Defence, and there we are embarking upon a programme of gradual Indianisation. As the Defence of India becomes Indianised, so the particular justification for the reservation of a Defence Department will more and more cease to exist, and the solution, therefore, of the reservation of Defence, subject always to the rights of the Princes under their Treaties, will depend, to a great extent, upon the progress of the Indianisation of Defence.

6844. But it can only be effected by an Act of Parliament ultimately?—Ultimately, certainly.

*Major Cadogan.*

6845. It cannot become transferred by convention or by desuetude?—No, that

is exactly what I said to Sir Tej—only by Act of Parliament.

*Lord Eustace Percy.*

6846. Might I ask you upon that pure question of fact, is it intentional that there is no provision in the White Paper requiring that a Counsellor of the Governor-General shall not be a Member of the Legislature?—I think we have left it completely open.

6847. You have left it completely open, deliberately?—Yes.

*Mr. Rangaswami Iyenger.*

6848. Therefore, would it be possible, even under your White Paper scheme, for a Member of the Legislature, who commands the confidence of the Legislature, to be in practice in charge of the Defence, in due course?—Just complete the end of your question again, Mr. Iyenger.

6849. And, therefore, according to your White Paper, there could be no Constitutional impediment in the way of the Governor-General appointing a Member of his Council for the Reserved Departments, a Member of the Legislature commanding the confidence of the Legislature, in due course?—We have left the choice absolutely free to the Governor-General. He can take anybody he likes; he can take the best man that he can find.

*Mr. Zafrulla Khan.*

6850. Supposing he does take an elected Member of the Legislature, would it not follow that the moment that Member was appointed a Counsellor, he would cease to be an elected Member of the Legislature? May I, in this connection, draw your attention to paragraph 25, on page 43, of the White Paper?—I think Mr. Zafrulla Khan is quite correct; I think that is so.

*Lord Eustace Percy.*

6851. Why?—He would become an official, and, being an official, he would vacate his seat.

*Mr. Rangaswami Iyenger.*

6852. Therefore, an Act of Parliament will certainly be necessary for register-

ing any progress in regard to putting Defence under the control of the Legislature?—Yes; I do not think there has ever been any question about that. That was the answer I gave to Sir Tej just now.

*Sir Tej Bahadur Sapru.]* You made your position quite clear, in your answer.

*Sir Austen Chamberlain.*

6853. Broadly speaking, the position is that the exercise of powers under the Act may be varied as circumstances alter, but the Act itself can only be varied by the same authority which passes it?—Exactly.

*Lord Eustace Percy.]* Just on this question of fact, I want to get this clear. Proposal 25, so far as I read it, does not say that a Member of the Legislature who is appointed a Counsellor shall thereby vacate his seat.

*Lord Irwin.]* Surely, it is hard to imagine an elected Member being denied the right of voting?

*Lord Eustace Percy.]* But under Section 25 the emphasis, surely in that second paragraph is on the words "*ex officio*." He is *ex officio*, an additional Member of the Chamber, even if he is not of the ordinary Chamber. It does not say he shall not be a full Member of the Chamber, if he is a Member of the Chamber.

*Sir Akbar Hydari.]* Paragraph 34 (a).

*Lord Eustace Percy.]* Yes, that is relevant. Is 34 (a) intended to exclude a Counsellor?

*Marquess of Salisbury.*

6854. Does the Secretary of State adhere to his answer—I presume he does, as the White Paper suggests, that an elected Member cannot be one of the Counsellors?—Yes; he would have to resign his seat.

*Sir Akbar Hydari.]* Paragraph 34 (a).

*Archbishop of Canterbury.*

6855. He would resign his seat, and then resume a different position as a Member without voting?—Yes.

Marquess of Reading.

6856. That follows, does it not, from 34 (a), and then applying the last paragraph of 25?—Yes, that is so.

Mr. Cocks.

6857. I have only one more question to ask the Secretary of State, and it is this. Will not the Central Government as contemplated by the White Paper, be an exceedingly conservative body, using the word in its general sense, of course. Will not its weakness be a tendency to resist change, rather than an inclination to headlong progress?—That is a very wide question, but I think Mr. Cocks should remember that the Federal Government has a limited and defined sphere of activity. It is a Federal Government, and it will deal with the Federal subjects set out in one of the Appendices, or some such subjects. I do not think the kind of considerations that he has got in mind will really enter very much into the activities of a Government of that kind.

Lord Snell.] My Lord Chairman, my questions have been covered.

Major Attlee.

6858. Secretary of State, I want to ask you one or two questions to try and get a picture of what the Central Government is going to be like. You say that the range of subjects is fairly small at the Centre?—Yes.

6859. Does it not come down to this that you have Foreign Affairs and Defence reserved and your railways are going to be under a Railway Board? The subjects with which they will have to do are really confined to what we should call Board of Trade Exchequer, and Attorney-General subjects, practically, a very narrow range of subjects?—Major Attlee will see the range of subjects in Appendix VI.

6860. That is a rough summary?—But, speaking generally, I would say the field would be a limited field.

6861. For the purpose of dealing with that, you are going to have two Houses with 635 Members altogether. Is not a great number of your Members going to have extremely little to do with the very

large body at the Centre with such a small range of subjects?—Major Attlee is saying very much what I myself have said at former discussions. I have always thought that if we were writing upon a clean sheet of paper, and we were creating an ideal kind of Federal Constitution in India, we should follow very much the line that Major Attlee's question has just suggested, namely, we should have a small and, possibly, a rather technical expert body in the Centre, dealing with this limited number of Federal questions, and in the realm of theory, there is almost an unanswerable argument to be made for a Government of that kind. The trouble we have found is that there is a series of practical difficulties, that, so far, we have found almost insurmountable in the way of forming a Government of that kind. Let me suggest to Major Attlee one or two of them. Perhaps, the two most prominent are, first of all, the desire of a substantial number of Princes that their representatives should take a direct part in the Central Government. That fact in itself, has so far made it very difficult for us to keep the numbers of the Legislature lower than the numbers that we propose in the White Paper. Secondly, there is the fact that hitherto, I think almost without exception, the representative of British-India have been in favour of bigger Chambers, such as those that I have suggested, and have attached very great importance to those Chambers having a more popular foundation than would be possible in the kind of Chamber that I at one time contemplated. That, my Lord Chairman, is the problem. Upon the grounds of merit, there is a great deal to be said for a small Chamber and a small Government dealing with a limited number of Federal subjects. Upon the grounds of public policy, there are two facts that have got to be taken into consideration. First of all, the satisfaction of a sufficient number of Princes that they will be taking a direct part in the Government of an All-India Federation, and, secondly, the very strong public opinion in British India itself.

Mr. Y. Thombare.] And besides this, there is again the consideration that the Central body will have to deal with a

Revenue of nearly 78 crores, an expenditure of nearly 77 crores, which represents nearly half of the Revenue and half the expenditure for the whole of India.

*Chairman.*

6862. I shall have to interrupt Major Attlee now in order to inform the Committee that the Secretary of State in obedience to a command, must leave us at this moment, a quarter to one. The Secretary of State has suggested to me that the Committee and the Delegation might choose to continue the examination of Sir Malcolm Hailey and Sir Findlater Stewart on the more technical interpretation of the White Paper, perhaps, in his absence. I understand that he will return here at about a quarter to three. Is that correct, Sir Samuel?—I will come back as soon as I can; I shall assume, about then.

6863. We must release then at this moment the Secretary of State?—I think, my Lord Chairman, Sir Findlater Stewart and Sir Malcolm Hailey could deal with a great many of these questions on the interpretation of the White Paper in my absence. Any questions of policy, I could resume when I come back.

*(The Secretary of State withdrew.)*

*Sir A. P. Patro.*

6864. Sir Malcolm or Sir Findlater, will you kindly tell me, is it meant that in order to fulfil the condition required in the White Paper, that weight will be given in both Houses to the States who have already joined the Federation? It is said that weightage will be given to the States who have already joined in the Federation. Is it meant that in order to fulfil the condition required in the White Paper weightage will be given in both Houses to the States who have joined the Federation, or is it laid down in the White Paper that you are going to give weightage to the Indian States?—*(Sir Findlater Stewart.)* The weightage the Secretary of State has been talking about to-day will only arise when the 51 per cent. which is laid down as a condition of Federation is in being.

6865. Is it not unfair to British India that the Federal Assembly should be

swamped with the Indian States?—It cannot be swamped beyond the percentage that is contemplated for the permanent state of affairs, that is to say, 30 per cent.

6866. Is not it unfair and an injustice to British India?—I conceive the Secretary of State's view to be this: You have got to persuade the States that when they come in to the extent of 50 per cent. they shall not be left in a rather weak position pending the time when the other States see fit to come in. There is bound to be some kind of lag in a matter of this sort. Every State does not make up its mind at the same time, and, as I conceive the Secretary of State's tentative suggestion, it is, that you should make some kind of interim weightage in order to cover this lag period. He does not intend in the least that the British Indian side of either House should be swamped.

6867. British India has elected representatives and Indian States are only nominees of the Princes. Are you not therefore increasing the unrepresentative character of both Houses by giving weightage to the Indian States?—I do not think you are increasing it beyond the extent to which it is contemplated that it shall exist when the full scheme comes into force. If you are saying that the representation of the Princes by nomination is unfair or wrong, that is a different question, but that is a question of policy that perhaps I had better not go into.

6868. I am not going into the right of the Princes to nominate but by acceding to the principle of weightage are you not increasing the unrepresentative character of these two assemblies?—*(Sir Malcolm Hailey.)* I think it would be true to say that if a wrong has been done it has been done by laying down those proportions of 125 out of 375 in the Lower Assembly. The wrong is not increased by giving an *ad hoc* weightage pending the arrival of the full percentage of Princes.

6869. A wrong has been done to British India by allowing this kind of representation—nomination by the Princes; and added to that you give them weightage in order to destroy any kind of representative character in the Assembly?—*(Sir Findlater Stewart.)* Of course, the



Secretary of State would not admit that a wrong had been done. He would not admit your primary proposition.

Mr. *Zafrulla Khan.*] Your submission is that this is weightage upon weightage ?

Sir *A. P. Patro.*] More than that. It is crushing the British Indian by dumping in the representation of the Indian States.

Sir *Akbar Hydari.*] You would want the Indian States to come in without giving them any voice ?

Sir *A. P. Patro.*] We know what the Indian States are, and therefore we know the danger of having nominees of an unrepresentative character in this Assembly.

Sir *Hubert Carr.*

6870. No. 44 gives the Governor-General power in his discretion, "in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his 'special responsibility' for the prevention of any grave menace to the peace or tranquillity of India, to direct that the Bill, clause or amendment shall not be further proceeded with." That, I understand, is only in the case of his special responsibility for the peace or tranquillity of India being threatened. Does any such power exist for him in the case of his other special responsibilities being threatened ?—No, I think not.

6871. For instance, (b) : "The safeguarding of the financial stability and credit of the Federation" ?—No ; it is limited to the special responsibility for grave menace to peace and tranquillity. (Sir *Malcolm Hailey.*) I think I could give Sir Hubert the reason for that. It is a practical repetition of Section 67 (2 a) of the existing Act which only refers to the safety and tranquillity of British India, and it has been repeated almost in terms.

6872. It is not considered necessary to give the Governor-General that power to prevent his responsibilities being threatened other than peace and tranquillity ?—(Sir *Findlater Stewart.*) No. He could, of course, refuse his assent to the Bill as passed by the House.

6873. But he cannot stop the discussion ?—No.

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Dr. *B. R. Ambedkar.*] I would like to reserve my questions for the Secretary of State because they are questions of policy.

Mr. *N. M. Joshi.*

6874. May I ask a question about the initiation of Money Bills in the Lower Chamber only ? I want to know the exact interpretation of the word "initiation." I will give an example. If there is a Bill for increasing the rate of Income Tax and it is defeated by the Lower Chamber, can it be taken to the Upper Chamber ?—Yes.

6875. My question was if a Bill is introduced into the Lower Chamber increasing the rate of Income Tax, which is a Money Bill, and if the whole Bill is defeated, can it be taken to the Upper Chamber ?—The intention is that he should then be able to take it to the Upper Chamber.

6876. May I ask you what is the advantage of the proposal that the Money Bills shall be initiated in the Lower Chamber ? There is a joint session ?—It is to enable discussion to take place in two Chambers before the joint session takes place.

Marquess of *Salisbury.*] Is it a question of tax being struck out in the Lower Chamber and restored in the Upper Chamber ?

Mr. *N. M. Joshi.*] The question is whether a Money Bill consisting of the increase of the Income Tax once defeated by the Lower Chamber, could be taken up to the Upper Chamber ?

Marquess of *Salisbury.*] Not if the whole Bill had been defeated.

Mr. *N. M. Joshi.*] The Bill is for the rate of Income Tax being increased.

Sir *Austen Chamberlain.*

6877. Will Sir Findlater Stewart consider what the answer to that question is ? Is it really in the affirmative that if a Bill proposing to raise Income Tax were introduced as it must be in the Lower Chamber, and were rejected there, it would be possible for it to be then reintroduced into the Upper Chamber ? Is that compatible with the initiative being with the Lower Chamber in matters of finance ?—If you look at Proposal 42, suppose it were a Money Bill, a taxation

Bill upon the passing of which depended the Governor-General's power of financing his Army expenditure (that is the kind of case in point), in order to enable the Governor-General to fulfil the responsibilities imposed upon him for the Reserved Departments, he will be empowered at his discretion "(a) to present, or cause to be presented, a Bill to either Chamber," and to declare by a Message that it is essential and then have it passed. We should have to use this. Supposing it were thrown out in the Lower Chamber, I think the intention was to enable him to introduce it in the Upper Chamber as a preliminary to a joint discussion by both Chambers. I admit the point is not very clear in the White Paper.

*Sir Tej Bahadur Sapru.*

6878. Is not that a very special procedure applying to the Governor-General's Acts? Would not that be an abuse of the power under that Proposal No. 42? These are the special Acts of the Governor-General and you have provided a special procedure?—Yes.

6879. To take a Money Bill which has been rejected by the Lower House to the Upper House would I submit be an abuse of this procedure?—The governing words in Proposal 42 are "to fulfil his special responsibilities."

6880. A Money Bill is not necessarily a special responsibility?—Not necessary; but I propounded a case where the securing of the money was essential for the purpose of carrying on his Army finance.

*Marquess of Salisbury.*

6881. This would be an exception to Money Bills being initiated in the Lower Chamber?—Yes.

6882. The case might arise that by order of the Governor-General it would be initiated in the Upper Chamber?—Yes, or repeated in the Upper Chamber.

*Mr. Morgan Jones.*

6883. Does that answer Mr. Joshi's question, which I understood to be this: Supposing a Money Bill dealing with Income Tax, having nothing to do with Defence, were defeated in the Lower Chamber, could that Money Bill be taken

to the Second Chamber and reintroduced there?—Not unless it fell within the special responsibility.

*Mr. M. R. Jayaker.*

6884. Is it not a fact that when a Bill is introduced for levying taxation it is not common to mention the purpose for which the money is to be utilised?—I will take that, but I have no doubt it is so.

*Viscount Burnham.*

6885. Is it not covered by Clause 39 of the proposals at the bottom of page 46, dealing with the power of the Governor-General who would be "empowered at his discretion, but subject to the provisions of the Constitution Act," and so on, "Before taking any of these courses it will be open to the Governor-General to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend."

*Mr. N. M. Joshi.]* May I make my question clear I definitely did not mention the budget because, if the money Bill at the time of the Budget is voted down by the Lower Chamber, there will be a breakdown of the Constitution. I shall not therefore deal with that case. I am dealing with a Money Bill which is brought before the Lower Chamber separately from the Appropriation Bill. I shall give up the first example which I gave about Income Tax, but suppose there was a Bill to raise import duties on wheat not for the purpose of getting money but to stop the importation of wheat. If such a Bill is brought before the Lower Chamber, and is defeated, what is the object of the framers of the White Paper whether that Bill shall be initiated in the Upper Chamber again or not?—I do not think it would be initiated in the Upper Chamber subject to Proposal 42.

*Sir Tej Bahadur Sapru.*

6886. The Money Bill will be introduced into the Lower House by the Finance Member, or by the Finance Minister. The Governor-General's Acts may not be supported by the responsible Minister, and that is the reason really for having a provision of that character,

and the Governor-General's Acts will be introduced into whichever Chamber you like by one of the three Counsellors?—That is true. It may be.

6887. Therefore the procedure contemplated by Proposal 42 would not apparently apply to the case put to you by Mr. Joshi?—I am afraid I was concentrating on the special responsibility side of the thing, and I wanted to make clear that there was provision in the Act.

*Mr. M. R. Jayaker.*

6888. With reference to Proposal 42, is it your interpretation that the provisions of Proposal 42 apply only to the Governor-General's Acts, or does it apply to other Acts which involve the exercise of his special responsibilities whether they are the Governor-General's Acts or the Legislature's Acts?—Proposal 42 applies to Governor-General's Acts: It is devoted entirely to them.

6889. Only Governor-General's Acts?—Yes.

*Sir Austen Chamberlain.*

6890. The original question, I understand, related purely to a taxing Bill?—Yes.

6891. And the answer that we received from Sir Findlater Stewart was that if the taxing Bill affected the Governor-General's responsibilities, he could re-introduce it into the Upper Chamber?—Yes.

6892. How would a taxing Bill affect the Governor-General's responsibilities? It is the appropriation of money, is it not, which affects his responsibilities, and that is dealt with under Proposal 50?—What I had in mind was this: Various passages in this White Paper secure that the Governor-General gets the right to take out money for defence purposes, shall we say, but that is all contingent on the money being there, and it may be necessary to pass a Taxation Bill in order to get the money there so that he may take it out. It is no good giving him the power to take it out if it is not there, and it may be necessary, therefore, to enable him to discharge his responsibilities for having an efficient well equipped Army; in effect, to give him power to tax so that the Exchequer

may be full, and that is what I had in mind when I made the first answer to the question.

6893. I understand his power to appropriate, and I understand his power to tax. What I do not understand is the reason for giving him power to introduce a taxing Bill into the Second Chamber if the first Chamber has already rejected it. I thought the initiative in taxing was to rest with the First Chamber. Am I right in that?—That is quite true normally, but this is a question that has been discussed in another connection before. In fact, it has been discussed in connection with Proposal 42. I can conceive that a Governor-General wishing to tax for the purposes of the Army, and having had his proposal's rejected in the Lower Chamber, might possibly be strengthened in public opinion by the agreement of the Upper Chamber, and I think in the past, if I am mistaken, the consent of the Council of State to financial measures has often proved of some use in the existing Constitution.

*Sir Akbar Hydari.*

6894. Would it not be like this, Sir Findlater, that even without bringing in the Governor-General the Money Bill would have been brought in by the Federal Government as a scheme of entire taxation—part of the way in which they could make the budget balance? The Lower Chamber somehow or other, by a very narrow majority, has thrown out that Money Bill. It is still open, is it not, under your White Paper, that the Bill should be carried to the Upper House, and, if it is passed there, then the difference of opinion between the two Houses would be resolved by a Joint Session?—Yes.

*Marquess of Lothian.*

6895. May I call attention to Proposal 48 which is relevant to this, and ask exactly what it means? It reads: "The demands as laid before the Assembly will thereafter be laid before the Council of State." Does that mean whatever alterations are made by the Assembly the original Bill shall be laid before the Council of State?—It means that these demands will be laid before the Council of State. It does not mean that the Council of State shall vote on all of them,

but, if a particular portion of the demands as laid before the Lower House has been thrown out, and if the Federal Government want to go on with it they can put that part of it (the rejected part and only that part) before the Upper House.

6896. In which case, if the Upper House sustains them, the matter is settled by a Joint Session?—Yes.

*Lord Irwin.*

6897. Have we not been discussing really two points?—Yes, this is a different one.

*Lord Irwin.*] There was a point out of which this conversation arose, put by Mr. Joshi, as to what would happen if an Income Tax Bill was rejected by the Lower House, and then a further point as to the range of the Governor-General's possible action under paragraph 42, his special responsibilities. As regards the first, I should have thought that, presumably, the Income Tax law will have been introduced by the responsible Finance Member, and the Government will have been defeated in the usual fashion, and it will be for the Finance Member and his Ministry to decide what action they will take upon that; if they shall demand a vote of confidence, or what they shall do. If the connection between the Bill and his special responsibilities is sufficiently close, the Governor-General could proceed under paragraph 42.

*Lord Eustace Percy.*

6898. On the first point, under paragraph 48 it could still be reintroduced into the Upper House?—Paragraph 48 is a third point. It is appropriation.

*Lord Rankeillour.*

6899. I think the demands under paragraph 48 are appropriations; they are not demands for taxes?—No.

6900. It does not say under paragraph 48 or 47 that a Resolution for a new tax may not be introduced in the Upper Chamber. It may say so somewhere else, but it does not say so in either of those paragraphs?—Paragraphs 47 and 48 have no relevance to legislation at all.

6901. The procedure before legislation is grants and supply?—There is not in

India any Appropriation Bill. (*Sir Malcolm Hailey.*) If you had a balanced budget your demands for grants would be voted within the budget, and they would be under no necessity then of introducing any legislation at all either to implement the budget, or to secure fresh money.

6902. No confirming Bill of any kind?—No.

*Marquess of Salisbury.*

6903. Is that really intended? That is quite different from the procedure in England?—That is the procedure we have adopted hitherto, and there is nothing in the White Paper which would make us alter that procedure. On a balanced budget there is no need for legislation; all that is required are votes of supply.

*Mr. Rangaswami Iyenger.*

6904. As a matter of fact, there are annual Finance Bills now introduced in the Legislative Assembly by which certain measures of taxation are expressly put down as annual in order to enable the Assembly to discuss the budget?—That was convention only, and it is no doubt very convenient, but it is not necessary to repeat a convention as a Constitutional requirement.

*(After a short Adjournment.)*

*Sir H. Gidney.*

6905. My Lord Chairman, I would like to ask a few questions. Sir Findlater, would you tell me, in the event of a vote of no confidence being carried in the Lower Federal Chamber, the Ministry resigning, and the Governor-General not able to form a Ministry, would that indicate that both Houses, the Upper and the Lower Houses, would have to dissolve?—(*Sir Findlater Stewart.*) It would, of course, be for the Governor-General to decide whether it was a case for dissolving both Chambers or either of them.

6906. Could you dissolve one and not the other with a joint Ministry?—I think you could. There is no obligation to dissolve both.

6907. But if there is a joint Ministry, how could you dissolve one and retain the Minister of one House and not of

the other?—You would not necessarily retain them as Ministers.

6908. In paragraph 12, on page 40, of the White Paper, it states that the Governor-General is to be given three Councillors. Would it be acceptable if to one of these Councillors was given the Portfolio of Protection, safeguarding the rights of minorities?

Sir *Austen Chamberlain*.] My Lord Chairman, I am sure Sir Henry will forgive me, but is not that a question of policy, which must be reserved until the Secretary of State is in the Chair?

Sir *Henry Gidney*.] Very well, if that is so. In another part, in paragraph 24, on page 43, it is stated that the Upper House will have a life of seven years, and the Lower House a life of five years. Is there any reason why there should be this difference in the lives of the Houses, especially in view of the fact that there will be a joint Ministry?

*Chairman*.] I think these questions of policy had better be reserved until the Secretary of State resumes the Chair.

Sir *Henry Gidney*.] Then I will not ask any more questions; I will reserve them for the Secretary of State.

Sir *Tej Bahadur Sapru*.

6909. I have a certain number of questions relating to policy to put to the Secretary of State, which I will reserve, but I am quite willing to ask technical questions of Sir Malcolm Hailey and Sir Findlater Stewart, just to explain them. I am not going to raise any question of policy just now. Will you kindly turn to Proposal 12? There you say: "In the administration of these Reserved Departments, the Governor-General will be assisted by not more than three Councillors who will be appointed by the Governor-General, and whose salaries and conditions of service will be prescribed by Order in Council." The first question that I wish to put to you is: In the selection of these Councillors, the choice of the Governor-General will be absolutely unrestricted. Is that not so?—Yes.

6910. He is not bound to take any man holding an appointment under the Crown in India or in England?—No.

6911. He may?—He may.

6912. And he may select all of them or any of them, or two of them, from

among the Members of the Legislature?—Yes.

6913. Then you say: "Those salaries and conditions of service will be prescribed by Order in Council." Do you propose to give the Indian Legislature any voice in the fixing of the salaries of these three Councillors?—I understand not. They are to be fixed by Order in Council on the advice of the Governor-General—by Order in Council issued by the Crown here.

Sir *Austen Chamberlain*.

6914. That must be constitutionally on the advice of the Secretary of State?—Yes.

Sir *Tej Bahadur Sapru*.

6915. Can you kindly tell us whether you have any proposals as to the scale of salaries of these Councillors? Will they be the same as those of the Members of the Executive Council, or something less?—We have not considered that at all.

6916. If you will kindly turn to paragraph 25, there you say: "A Member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a Member. A Councillor will be *ex-officio* an additional Member of both Chambers for all purposes, except the right of voting."

I suppose this is subject to the explanation given in the morning, that if a Councillor is appointed from among the Members of the Legislative Assembly, he will become an official, and, therefore, will cease to exercise his right of voting?—Yes.

6917. Now will you come to Proposal 34 (a), and will you kindly tell us—

*Chairman*.] You remember we agreed to reserve Nos. 26 to 37.

Sir *Tej Bahadur Sapru*.] I am only putting one question which comes in here with regard to that.

*Chairman*.] Very well.

Sir *Tej Bahadur Sapru*.

6918. I am not raising any question with regard to those matters which your Lordship wanted to be reserved. "(a) In the case of elected Members or of Members nominated by the Governor-General,

the holding of any office of profit under the Crown other than that of Minister." Will this rule or the principle of this rule apply to those lent officers who are serving in the Indian States—that is to say, will it be open to the Indian States to nominate British or Indian lent officers?—I think the Secretary of State would like to consider that matter further.

Sir *Tej Bahadur Sapru*.] Very well, I will reserve that. Now will you kindly turn to paragraph 36: "Subject to the rules and Standing Orders affecting the Chamber, there will be freedom of speech in both Chambers of the Federal Legislature."

(*The Secretary of State resumes the Witness Chair.*)

Sir *Tej Bahadur Sapru*.

6919. May I dispose of this question that I was just commencing: Do you see any objection to the Indian Legislature or the Provincial Legislature in future passing legislation to define their own privileges?—I myself should say not.

6920. You see no objection?—No.

Major *Atlee*.

6921. Mr. Secretary of State, when we broke off, I was asking you the reasons for the size of the Legislature, and you gave me various reasons. I now want to ask as to why you think it necessary to have two Chambers or two Houses at the Centre?—(Sir *Samuel Hoare*.) I think there are mainly two reasons in our minds: One: We feel that if the Federal Legislature is created upon the lines of the White Paper, a Second Chamber is almost inevitable. We feel that the more conservative elements, rightly or wrongly, both here and in India, will expect to have the protection of a Second Chamber; and, secondly, we think that the Indian States would almost certainly insist upon a Second Chamber, if the First Chamber is constituted in the kind of way in which it is constituted in the White Paper.

6922. But as those two Chambers are to have equal powers, and in the event of their disagreeing, are to have a joint Session, does not it really turn upon the question of the composition of the Chamber—that, in effect, what you are doing is really merely giving a certain conservative loading to your Chamber

without any of the usual reasons for a Second Chamber, that is to say, in a Federation representing the Federal Units on a different composition?—My own view is that it is inherent in the kind of proposals that we have made in the White Paper that there should be two Chambers. If, however, we had advanced on the alternative line, namely, of having a small expert body to deal with the limited number of Federal subjects, then I agree, assuming the representation was reasonable between the Indian States and British India, the case for a Second Chamber would be much less strong.

6923. Do you conceive in the Indian Central Legislature the development of a Parliamentary system of Government with Parties, and the Ministry, dependent upon the vote of the House from day to day?—Yes, up to a point, remembering always the conditions that differentiate the state of affairs in India from the state of affairs here, namely, the fact that the Indian States will have an effective representation in the Government and in the Legislature, and also that the representation of minorities has to be assured.

6924. But your conception is of something that is going to develop, and your idea of its future development is definitely on the strictly Parliamentary line—that is to say, on the British model. Is that so?—Assuming that we have the kind of Chambers at the Federal Centre that are contemplated in the White Paper. If we had advanced on the other line, namely, the line of the small expert body at the Centre, then I think the development would not be upon British Parliamentary lines at all.

6925. That is the point I wanted to get out, that your composition of the two Chambers is conditioned by your idea of the kind of Constitution you want to see at the Centre. The provision which you have made for representation and your two Chambers, one of them directly elected, is conditioned by the fact that you have a conception of the Parliamentary model being instituted in the Central Government?—No. I think I would begin the other way round and say, assuming the kind of Constitution that we propose for the two Federal Centres, then I think development will be more on the lines of the British Parlia-

mentary practice than it would be if the body was a small expert body.

6926. Is that the reason why, for instance, you have directly elected Members at the Centre, because of the need for working on a Parliamentary model?—No, much more, because in a question of that kind we have felt it necessary to take into account the very strong opinion expressed on the subject in British India. I would say myself—indeed, I have never made any secret of my views at any of our former discussions, that if we had been working on a clean sheet, the kind of expert body, not constituted upon a basis of direct election, would seem to me to be much more suitable to the due performance of the Federal functions than two Chambers, one of them elected by direct election, constituted much more upon the lines of British Parliamentary institutions here.

6927. But a system of indirect election does not imply, does it, an expert body at the Centre?—No, perhaps it does necessarily do so, but it seemed to me to be very much a feature of the alternative kind of Centre. May I explain myself a little bit further? I think you can do one of two things: You can set up what you regard as the ideal organs for performing the Federal duties, and you can do that without taking into account issues of political expediency at all. On the other hand, you can go upon the line of trying to make effective Chambers in the Centre, but of trying to carry with you big bodies of political opinion in India. In all our former discussions upon the question of direct or indirect election, I have always argued deliberately in favour of indirect election, but I have never been able yet to see how to surmount the very formidable obstacle in the way of indirect election that is shown by the very definite feeling in favour of direct election in British-India.

Major *Cadogan*.] What were the reasons given, Secretary of State, for that predilection in favour of direct election?

Sir *Hari Singh Gour*.] They have been given by the Simon Commission.

Major *Cadogan*.

6928. We realise there was that very strong feeling in favour of direct election, but what were the reasons for it?—

I think the Indian Delegates will be able to give an answer to that question much better than I can. I would say—they will correct me, if I am misinterpreting their views—

Sir *Austen Chamberlain*.] My Lord Chairman, I am only anxious to know when is the proper time to discuss or examine questions. I had supposed that the kind of issue which is now being raised was reserved for discussion when we came to the franchise. I do not in the least wish to interfere with the liberty of the other Members, but if this is the proper time to take it and not on the franchise issue, then I hope that some of us who have been under a misapprehension may have an opportunity of putting some further questions to the Secretary of State. I would only like to have guidance, my Lord Chairman (this is very important), as to what is the best time, according to the programme that you have submitted to us, for us to discuss it.

Major *Attlee*.

6929. Might I say on that, that when you laid that down, I indicated that there were certain franchise matters which could not be separated from the kind of Constitution you want at the Centre. While I did not want to pursue the matter of the method of election, and so forth, I think it is impossible when you are considering what kind of Constitution to have at the Centre not to consider the method of election, because it goes to the whole root of the matter?—I would have thought that probably the wisest course was to deal with the kind of issues that Major Attlee is raising rather in a general manner and with their background of the bigger Constitutional issues. By that I mean, that Major Attlee has raised this very important issue as to what kind of organs are most suited to the Federal duties at the Centre. There the issue is a simple one between the ideal kind of arrangement that we should create, if we had to consider nobody else's feelings, and the other kind of Centre organs that we should create, if we wished, to take into account public opinion in India.

Sir *Austen Chamberlain*.

6930. I beg the Secretary of State's pardon, but I think there is a third

alternative which I am very anxious to discuss with you, which is germane to this issue, if this is the proper time to raise it. All I submit, my Lord Chairman, is—I do not want in the least to hamper Major Attlee—that you will be good enough to give me another opportunity, since this issue is raised now of putting some questions to the Secretary of State?—I do not at all disagree with Sir Austen. I did not wish in any way to exclude the further alternative as to whether in our scheme it is possible to substitute one form of election for another.

Earl Peel.

6931. I am intervening here, because with reference to the question asked by Major Cadogan, I remember very clearly in previous discussions there was a very strong opinion expressed that British-India having already the Central Assembly directly elected, they did not want to have, as it were, that Assembly to be abolished and nothing else to take its place in the Federal Government, and was it not very largely feelings of that kind that prompted the representatives of British-India to press very strongly for a directly representative Chamber as one of the Chambers at least in the Central Government?—I should think that was one of the reasons.

Major Cadogan.] I understand we can raise this question when these proposals for the franchise are discussed before the Committee?

Chairman.] That is so. It seems to me that a hard and fast rule cannot be laid down, and with the general intention before us, I can only leave it to the judgment of individual Members of the Committee.

Sir Austen Chamberlain.] The point I want to put is not a point of detail; it is really a fundamental point in the Constitution.

Chairman.] I suggest Sir Austen should put it at the end of this Section.

Sir Austen Chamberlain.] Thank you.

Major Cadogan.] My Lord Chairman, you, no doubt, rightly pulled me up when I was going to ask a question on the Constitution of the Assembly. My question was concerned with the very question that Major Attlee raised just

now, so I hope I shall have the opportunity of raising it on another occasion.

Chairman.] Certainly.

Archbishop of Canterbury.] Is there not a clear distinction between the broad Constitutional issues, though they involve the franchise and details as to the franchise itself? That is the proper thing to reserve, but these Constitutional questions, even if they involve the franchise, are pertinent to this matter.

Major Attlee.

6932. The further point that I wish to raise is this, that given the ideal of a Parliamentary system at the Centre, is it really possible to conceive our Party Government, when one portion of the Assembly is drawn from the directly elected persons, and the other consists of nominees of States? Does not the Parliamentary system depend for its validity on the contact between the Member and his constituents?—I am not sure that I would go so far as to say, yes, to Major Attlee's second question. I am inclined to think, although I admit it is very dangerous to make any kind of prophecy, that political development in India will not be in two distinctive lines with British-India, on the one hand, and with Indian States, on the other. I believe that there will be a tendency of grouping for the purposes of political questions between Provinces and States very likely contiguous to them. If that is the case, I can see a much greater cohesion between the Ministers from British-India and the Ministers from the Indian States than there could be if there was an impossible gulf between the two.

Mr. M. R. Jayaker.

6933. Then you do contemplate State members in the Central Legislature entering the political Parties of India?—I would not go so far as to say that. I am assuming a future development in which, I believe, the questions at issue will be questions that will not divide British-India, on the one hand, and the Indian States, on the other, but they really will be All-India questions that will affect groups of States and groups of Provinces, very likely, in much the same way.



6934. What I was going to ask you was, does your scheme envisage the possibility, however distant it may be, of State Members entering political Parties in India. There is nothing in the scheme of the White Paper preventing it?—There is nothing in the scheme of the White Paper preventing it.

Sir A. P. Patro.

6935. We can visualise it from the other parts of the White Paper?—There is nothing in the White Paper preventing it, and I would not like to express an opinion at all as to how those developments will take place, except to say that I believe more and more individual Indian States will find that their interests are very much the same, as, perhaps, Provinces that adjoin them, and that, if so, the cleavage of opinion will be much more regional than between British-India, on the one hand, and the Indian States on the other.

Major Attlee.

6936. Arising out of that, if you have your Parties, either parties as are formed in the Chamber, or parties that have their roots in the country—if you have the Second Chamber, is there not a danger, if you are going to have Parties of which States are to be constituent parts, that, in effect, a large State might influence those whom you say have interests around it, and that, in effect, you will have a State Party with the persons supported by the money from the State forming a *bloc* in your Legislature?—I should not like to be drawn into a further prophecy upon points of that kind. I feel that even what I have said may be open to certain misrepresentations. I would much rather leave the future free, and to leave it free with my own belief that, as I say, divisions are going to be much more regional than they are going to be between one type of Minister and another type of Minister.

6937. You see, Secretary of State, the point I want to make is that we should not form a Legislature on a particular basis which would only fit a quite impossible Constitutional situation. The next point I would like to ask you is with regard to the position of Ministers. You are, in effect, going to have a dyarchy in the Centre. On page 13 you

say that Ministers and the advisers of the Reserved Departments are going to be kept in the closest contact and without blurring the line that shall divide the two. Is not that precisely what was tried in the Provincial dyarchy, and did not the Simon Commission, at all events, as we see on page 213 of Volume I, decide that it was quite impossible to prevent that line being blurred?—There is a very real distinction between the two, and I think it would be better if I asked Sir Malcolm Hailey to answer this question from his own experience in the field of Provincial administration. (Sir Malcolm Hailey.) Our difficulty arising from the existence of dyarchy in the Provinces was due to the fact that we were really, in effect, on both sides dealing with one common field of administration, that is to say, that everything that was done on the transferred side was liable to affect us on the reserved side, and vice versa, and it was because you had two diverse authorities dealing with the same field that the difficulties of dyarchy arose. But, in the contemplated Federal Government, you will have a complete field under the Ministers and an entirely separated field in the Reserved Departments; that is to say, that Defence is, in effect, a self-contained subject which impinges very little on the ordinary subjects of Civil administration, and the same with external affairs. They have their relations, of course, but their relations are in no way as close as were the relations between the reserved side and the transferred side in a local Government.

6938. May I suggest to you, that the all-important thing that brings them together, and which is the vital thing in a Provincial Constitution, is the fact that both sides depend upon the same purse; that where you had reserved Services and had the first claim upon the purse there was a tendency to attack those in the interests of the transferred side. Will you not have precisely the same thing at the Centre with the criticism you already have on the Army directed from the unreserved side?—You may have attack at the time of the division of money, but you will not have a blurring of administration.

6939. Is it possible to separate entirely Military administration from, let us say,

that of the Railways ?—I think they only come into relation in the time of mobilisation, and the like.

6940. Can Foreign Policy be kept entirely separate from Tariffs, and have nothing to do with each other ?—(Sir Samuel Hoare.) The answer to Major Attlee is that, no doubt, it can be. At the same time, there is a general field that is fairly easily defined of foreign politics, and there is another general field of Tariff institutions. We have got very much the same position to-day. Under the Fiscal Autonomy Convention, as Major Attlee knows, we do not intervene here in fiscal questions when the Governor-General and the Indian Legislature are agreed, but it may well be that there are cases that, whilst primarily fiscal questions, are ultimately questions of foreign and Imperial politics. In that case, the Imperial Government, obviously, has a *locus standi* and has to make its voice heard. In actual practice, I think we have been able to respect both sides of the position, and we have been able to work the arrangement fairly satisfactorily. I do not foresee substantially greater difficulties in the future than might arise now.

6941. Do I take it that there will be any opportunity of discussion by the Central Legislature of Foreign Affairs ?—Yes, within the terms of the Rules of Business that are laid down.

6942. Because does not amount you spend on your Defence largely depend upon your Foreign policy ?—Not very much in India.

6943. I suppose you have the question of Army expenditure coming up ; the Army Vote has got to be defended. Has that not got to be defended with a view to the external relations of India ?—But then I do not quite see to what conclusion Major Attlee is leading up. It points, surely, to keeping both the Departments in the Reserved side.

6944. My question is really as to how far you are going to get an informed public opinion in the Central Legislature on Foreign Affairs, and on the Army, where they are strictly Reserved, because, if you do not, I see a trouble over your Indian Budget with regard to money wanted for Defence ?—We have assumed that the Viceroy should discuss expenditure upon Defence with his Ministers before the Budget is intro-

duced. We assume also that there should be a debate upon Defence at some period of the year. The opportunities for forming public opinion will, therefore, be just as great in one sense as they are now ; indeed, they will be greater if the Governor takes the Ministers into his confidence before he introduces his Budget.

#### Archbishop of Canterbury.

6945. May I just intervene on that point ? I suppose, according to 52 (b), there may be discussions on these foreign relations provided the Governor-General gives his consent ?—Yes.

6946. It would be much better if that were put the other way round. Instead of putting "prohibiting," it should be "subject to the consent of the Governor-General, discussion may be," and so on. However, that is a detail ?—I think that is a matter of argument.

Archbishop of Canterbury.] Yes. It is provided there that discussion is possible provided that the Governor-General in his discretion feels that it would be opportune to have it.

#### Marquess of Salisbury.

6947. But the point of Major Attlee's questions, was, I understand, that if, as is conceded, the Legislature discusses Foreign policy and Defence and the money which is required for those Services, then there will be the same risk of blurring between the two Reserved and the Transferred Services, as has been found unworkable under the present Constitution ?—I do not know whether that is Major Attlee's view, or whether it is not. It is not my view at all.

#### Major Attlee.

6948. The point that we had discussed this morning on that was : What should be the attitude of the Ministers ? You may be optimistic and say that the Ministers will agree with the Governor-General. Perhaps, they will not. The Joint Select Committee's view, our predecessors on the Montagu-Cheimsford Reforms on a similar state of things, was that the Members of the Executive Council and the Ministers could disapprove of each others proposals, and need not support their colleagues, either

by voice or by vote. Is that going to happen in the Central Legislature? Is that going to be the relationship of Ministers on the one hand, and representatives of the Reserved Departments, on the other?—I should hope not. That is getting back very much to a series of questions we discussed this morning, is it not, when I thought we had dealt with those questions at some length this morning, as to what should happen in the event of the Governor-General not taking a Minister or his Ministers with him, I have got nothing further to add to what I said this morning.

6949 I am not really on what will happen. I am trying to look at the thing, as a whole, and imagine the Constitution working. I wanted to be quite clear as to how it differed in any way from a dyarchy that we saw working in the Provinces. I do not see any very great difference?—Sir Malcolm Hailey has just made what I thought was a complete answer to that, but it is a matter of opinion how much importance you attach to it.

6950. One further question, and that is with regard to the Reserved subjects. You said that you could only conceive of the Army and Defence being eventually a transferred subject when you have complete Indianisation. Will there be any express provision for Indianisation in the Constitution?—No, it does not come into the Constitution at all.

6951. It has not been considered as to whether there should be any definite provision?—It does not appear to me to be susceptible of Constitutional definition. What we have contemplated is that we might refer to it in the Instructions to the Governor-General. May I just amplify that, Major Attlee? The reason of my answer is not that I am unsympathetic to a programme of Indianisation, but that no one in the world, so far as I can see, can effectively define how long a process of that kind is going to take. It must depend upon the actual results from year to year. After all, the only test is the safety of India, and it must be judged as the experiment proceeds how quickly you can proceed with it without endangering the security of India.

6952. Could you provide for some kind of annual report showing the progress made?—That is a matter of detailed administration that we could consider.

6953. Of course, this is a point on which Indian opinion is very insistent?—Yes.

6954. Would you say that Foreign Affairs must remain Reserved as long as Defence is a Reserved subject, or is there any possibility of its being transferred sooner?—I should not like to give an answer, I think, to a question of that kind; I had not contemplated the question at all. It is so difficult to say how the developments will take place, how long Indianisation takes, for instance, and so on.

6955. You could not say what are the conditions which must be fulfilled before the control of Foreign Affairs could be transferred?—I think it is very difficult. I will think over the question, that I certainly could not give an answer now.

Marquess of *Salisbury*.] I hope the Secretary of State will not think that any large body of opinion will press him to define when Foreign Affairs can be entrusted entirely to the Federal Legislature. I do not know whether Major Attlee intended to suggest it.

Major *Attlee*.] I do not say that the Secretary of State must not assume that everybody thinks he is going too far. That is all I say.

Sir *Austen Chamberlain*.] I only want to add to the observations which have passed between Lord Salisbury and Major Attlee, that in any future which I can conceive, the foreign relations of India will involve this country, and this country must have a say in its own affairs.

*Witness*.] Apart from any question of difference of opinion, I think Major Attlee will find, when he thinks over the question further, that it is extraordinarily difficult to assign dates and to define conditions here and now. We are basing our proposals upon a foundation of organic growth, and it is extraordinarily difficult to place times and seasons and to define exactly when such-and-such a thing will or can happen.

Major *Attlee*.] Yes. I only want to see the shoot which grows in the Spring.

Mr. *Morgan Jones*.

6956. Sir Samuel Hoare, would I be right if I suggested that these White Paper proposals arise, in the first place,

anyhow, from promises and pledges made by British Ministers?—I think, certainly, promises and pledges, whether explicit or implicit, enter a great deal into these proposals; but there are other considerations that enter into these proposals as well, and I would be prepared to defend a great many of these proposals upon their merits, quite apart from any past obligations.

6957. When the pledges were made, were these other considerations cited at the time?—I do not know at all about that.

*Mr. Morgan Jones.*] Might I ask if, when, for instance, the Duke of Connaught spoke on behalf of the British Government, there were any conditions cited and spoken of India receiving Home Rule or Dominion Home Rule on the same terms as other Dominions?

*Sir Austen Chamberlain.*] Had we not better have His Royal Highness's exact words, if any question is to be based upon them?

*Mr. Morgan Jones.*] I have cited them already twice, Sir Austen.

*Sir Austen Chamberlain.*] I think we ought to have them again.

*Mr. Morgan Jones.*

6958. I am sorry I cannot put my hand on that actual quotation, and so I will not press that one, my Lord. I will take another which I can cite. Speaking at the last meeting of the First Round Table Conference, the Prime Minister used these words: "What have we been doing? Pledge after pledge has been given to India that the British Raj was there not for perpetual domination. Why did we put facilities for education at your disposal? Why did we put in your hands the text-books from which we draw political inspiration, if we meant that the people of India should for ever be silent and negative subordinates to our rule? Why have our Queens and our Kings given you pledges? Why have our Viceroys given you pledges? Why has our Parliament given you pledges?" and that succeeds a whole page, if not nearly two pages, elaborating the point as to the repeated pledges that have been made by Ministers on behalf of Parliament. Now the question I want to ask Sir Samuel is this: Do you advance

these White Paper proposals as a fulfilment of those pledges?—Yes, certainly.

*Lord Rankeillour.*] Arising out of that, I think I must just ask this: Has there been any pledge given by Parliament except that contained in the Act of 1919?

*Mr. Rangaswami Iyenger.*] The White Paper Resolution.

*Witness.*] I have always thought about all these pledges that their strength is much more moral and implicit than it is specific. I do not mean by that that they ought not to be carried out in the full spirit in which they were made, but my difficulty when I am asked to define my relations to a particular pledge is this, that almost always that particular pledge is in general terms. The pledges that Mr. Morgan Jones is now quoting are in general terms. I believe that in the White Paper proposals, we are acting fully within the spirit of all those past pledges, and that we are interpreting those pledges in the best possible way in the circumstances with which we are faced.

*Mr. Morgan Jones.*] I have just put my hand upon the quotation which I wanted from the Duke of Connaught; I will read it: "For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland. To-day you have the beginnings of Swaraj (self-government) within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy." That is the quotation which I referred to.

*Sir Austen Chamberlain.*] That shows the importance of having the exact words, if I may say so.

*Mr. Morgan Jones.*] I quite agree; and perhaps Sir Austen will point out to me in what sense I have departed from the spirit of those words?

*Sir Austen Chamberlain.*] No; I will not argue. I am quite satisfied that Mr. Morgan Jones has given us the exact words. I can only say I could not recognise them in his paraphrase, but that may have been my fault.

*Mr. Morgan Jones.*

6959. I agree. Now the next point, Sir Samuel, is this: Am I right or am I wrong in suggesting that these proposals

fall short of what is generally understood to be implied by the words "Dominion Self-government"?—I should say certainly, if you take the Statute of Westminster as the test of Dominion Self-government.

*Sir Tej Bahadur Sapru.*

6960. But, Sir Samuel, may I ask you one question at this stage? Take the Dominions as they were up to the date when the Statute of Westminster was passed: what would be your reply?—My reply would be that the conditions in India differ in certain definite respects from the conditions in any of the Dominions, notably in the field of Defence, and on that any Constitutional Act must take account of these differences of conditions. What we are trying to do in the White Paper is to take account of these differences of conditions and to give India a very wide opportunity for future development.

*Sir Hari Singh Gour.*

6961. My Lord Chairman, with reference to what Sir Tej Bahadur Sapru has said, may I inquire whether the Statute of Westminster created and conferred a new status upon the Dominions, and did not merely recognise their existing status, as was stated by the Balfour Committee?—That may or may not be so. In any case, it does not affect the answer that I have just given.

*Mr. Morgan Jones.*

6962. The point which I was leading to was this, Sir Samuel. These public declarations to which I have just referred were made by responsible people, all of them. Do you not regard it as of prime importance that the Government should not in any way lay itself open to the charge of failing to observe its undertakings so publicly expressed?—Certainly; and I claim that we are in no way open to a charge of that kind.

6963. But I thought you just told me, Sir Samuel, that these White Paper proposals do in fact fall short of Dominion Home Rule?—I did not understand from Mr. Morgan Jones that the Duke of Connaught's pledge was in the year 1933 that India was to receive Dominion status, according to the interpretation of the Statute of Westminster.

6964. I am merely on the point at the moment as to whether the pledge has been made. I am not concerned now so much with whether it is to be implemented. May I repeat my point, my Lord Chairman: As to whether Sir Samuel would regard these White Paper proposals as being a fulfilment of the pledge of Dominion Home Rule?—I have given my answer to that question. There is no point in my repeating my answer.

*Mr. M. R. Jayaker.*

6965. May I ask one question? Does the Secretary of State believe that the White Paper proposals will develop India for Dominion status unless they are regarded as transitional proposals?—I think they have in them the seeds of growth.

6966. Into Dominion status?—Certainly, assuming that the distinctive conditions that separate India from the rest of the Dominions are eventually removed.

*Sir Austen Chamberlain.*

6967. May I interpolate a question? Has any time been set in any Ministerial pledge within which the full ideal must be realised?—Not so far as I know; and I should be very much surprised if any Minister had made any such statement, for the obvious reason that we are dealing with uncertain factors, and nobody on earth can say here and now when the precedent conditions for such a state of affairs will have been satisfied.

*Mr. M. R. Jayaker.]* Yet the board interpretation of these pledges must necessarily mean that the ideal will be reached within a reasonable period and not in eternity.

*Sir Austen Chamberlain.*

6968. As I understand the pledge it is merely that we shall do nothing inconsistent with that, and shall at such times, and in such measure as we consider right, advance towards that goal. Would the Secretary of State agree with that?—Yes, with this one addition: and in the meanwhile remove wherever we are able the obstacles that stand in the way of future advance.

*Sir Austen Chamberlain.]* I accept that.

*Viscount Burnham.]* Is it not laid down in the Preamble to the Act of 1919 that

"the action of Parliament... must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility." Is not that a condition ?

Mr. *Rangaswami Iyenger*.

6969. May I take it that those Ministers who made these pronouncements did not look upon it either as a dream, or as a means of putting off to some indeterminate future this definite ideal of Dominion status ?—I should think it is certainly so.

Archbishop of *Canterbury*.

6970. Is it pertinent to ask whether there is any uniform Dominion Constitution at all ?—There is no uniform Constitution. Obviously one Constitution differs from another. When it comes to a question of status I think I would not be prepared to express an opinion.

Archbishop of *Canterbury*.] But status is one thing—a very vague term, speaking generally, of position, but something quite different from any particular form of Constitution. It does not follow that because India may not have the same Constitution as other Dominions it necessarily is to be debarred from that general position which is called status.

Marquess of *Salisbury*.] Dominion status, you mean ?

Archbishop of *Canterbury*.] Yes.

Marquess of *Salisbury*.] No one would say the White Paper had any resemblance to Dominion status, of course.

Mr. *Rangaswami Iyenger*.] That is true.

Sir *Tej Bahadur Sapru*.] That is true.

Lord *Rankeillour*.] Are not the words of the Preamble that have been quoted "with a view to the progressive realisation of responsible government in British India as an integral part of the Empire." That does not imply necessarily Dominion status ?

Sir *Tej Bahadur Sapru*.] May I point out to you, Sir Samuel, that the interpretation suggested by Lord *Rankeillour* just now was put by Sir *Malcolm Hailey* in the Legislative Assembly, and was expressly repudiated by Lord *Irwin* in his

announcement, and I am willing to quote that.

Marquess of *Reading*.] If that is to be inquired into you must take into account that there was a debate on the term used, and the Prime Minister definitely stated, and wrote a letter to Mr. *Baldwin*, that the use of the term "Dominion status" did not involve any change of policy. You must take that into account.

Sir *Tej Bahadur Sapru*.

6971. I should like to take it along with what Lord *Irwin*, who was the Viceroy at the time, stated and declared to us, and I am going to quote it. The whole trouble arose because of that interpretation which was put by Sir *Malcolm Hailey* at that time in the Legislative Assembly. That is the beginning of the whole trouble ?—Could not we now get back to the proposals actually in the White Paper ?

Lord *Irwin*.] As my name has been taken in vain, it might be worth while to interject that my much discussed Declaration dealt entirely with the realm of ultimate purpose. It made no commitments whatever as to date, as I was careful to point out to Sir *Tej Sapru*.

Sir *Tej Bahadur Sapru*.] I never suggested that you or anyone committed himself to a date. That is a matter of argument as to what you mean by making those Declarations, but, for heaven's sake, I say, do not try to whittle down that Declaration as was attempted to be done in the Legislative Assembly. That has been the beginning of all the trouble in India, and if at this stage we are told that the Declaration only means responsible government and nothing more speaking for myself. I have nothing more to do with this Constitution.

Lord *Rankeillour*.] Those were the words of the Viceroy. They can be overruled by Parliament.

Sir *Tej Bahadur Sapru*.] We attach much more importance to the Declarations of the Sovereign and the Sovereign's representatives, and we refuse to be drawn into these hairsplitting distinctions between the Viceroy and the Parliament. We take our stand on the Declaration of the King.

Mr. *Morgan Jones*.] My question concerned the purpose rather than the date.

Marquess of *Salisbury*.

6972. Let there be no mistake. We do not admit any pledge except a conditional pledge?—I should hope we will not get into a long controversy over terms. What I am interested in are the proposals actually in the White Paper.

Mr. *Morgan Jones*.

6973. I quite agree, only it is important that we should be quite clear that we are playing fair (if I may use the expression without offence) by the Indian people by carrying out, as far as we can within the limits of time, pledges we have made. That is the whole question?—I honestly believe we are playing fair, within the framework of our proposals there are seeds of growth that, if the Constitution is reasonably worked on both sides, will lead to very great development in the future.

6974. I will not press that any further. On the question of the accession of the States might I ask you this question, as to whether you have considered setting a time limit by which time the States must indicate their accession or otherwise?—We have often considered that proposal, and we have always turned it down for this very obvious reason. We cannot compel the States to come in if they do not wish to come in, nor can we compel them to agree to Instruments of Accession before they wish to agree to the Instruments of Accession, and it has seemed to me that the worst possible policy would be to appear to be putting a pistol at their heads when the whole basis of our proposals is founded upon the idea of free consent and free agreement. When I say that, it does not mean that we are not anxious that they should accede at the earliest possible date. We are anxious that they should accede at the earliest possible date, and we will try to do our best to smooth over the difficulties and to make their accession at a reasonably quick date. Further than that, I feel we cannot go, and, further than that, I think that it would be very unwise, in the interests of those who wish to see a Federation, to go.

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6975. Inasmuch as the States quite properly feel that they would like to see the whole picture before they take a decision, is it not equally fair that the other parts of India should like to know what their picture would be like vis-a-vis the States?—I should think British India will know pretty well the picture when the Act is passed.

6976. They will not know how many States are coming in by a certain date, I mean?—Yes, they will; they know that the Federation will not take any effect until X number of Princes accede.

6977. They will know the minimum number but they will not know how many will actually come in beyond the 50 per cent?—I would have thought that should not affect their view very much.

Sir *Tej Bahadur Sapru*.

6978. Would it not?—Just tell me, Sir Tej, what is in your mind. I do not follow the point.

6979. Supposing we wait for about a year or two, and find that the Indian States are not ready to come in, or you cannot get 51 per cent. of the Indian States to come in, the position will be that we shall have gone back to the recommendations (more or less, I do not say precisely) of the Simon Commission. We shall have to have only Provincial autonomy and nothing more unless, of course, you then entertain any proposition with regard to change of opinion at the British Indian centre?—But, Sir Tej, Mr. Morgan Jones' point was a somewhat different point, and it seems to me your difficulty would be equally great whether you have a time limit or whether you do not. How much better off will you be if you have a time limit, and you find at the end of that time limit a sufficient number of Princes have not acceded. You will be in exactly the same position as the position you have just described.

6980. No. I think then we shall ask you to alter the character of the Centre, irrespective of the Indian Princes, because we have never waived that claim?—Here, of course, we are getting on to a rather wider issue, but I have always said myself, and I believe my view has represented the view of the Government generally, that if there was a long and indefinite period of delay obviously we

should have to consult together again in view of the then existing circumstances.

6981. You have no doubt said that, and in the White Paper there is that statement. I recognise that?—Yes.

Mr. Zafrulla Khan.

6982. May I make one suggestion, or put one question to the Secretary of State, arising out of the last matter referred to. We fully recognise that the States must come in of their free consent. We also recognise that it is no use trying to put any kind of pressure upon them to come in. We also recognise, if the period continues to be indefinite during which we do not know whether they are coming in or not, a new situation is then created which we must face, but could the Secretary of State give us some idea as to how long he would be prepared to wait for the coming, or not coming in, of the States, and what sort of period, roughly, would convince him that it is not worth while waiting now under these circumstances, and we must face the new situation?—I have always hesitated to make any estimate of years. If I prophesy too short a time everybody will say what a very foolish person I was. If I am cautious, and I give a more distant figure, then a great many people will say: "You are postponing these things indefinitely; it is quite obvious you do not want to take action." I cannot go further than say that as far as we are concerned we will remove every possible obstacle that we can remove, and we will do our utmost, assuming Parliament endorses these or any other proposals, to see that these proposals are put into effect at the earliest possible date.

Mr. Zafrulla Khan.] I cannot press you further.

Mr. Morgan Jones.

6983. Turning now to the question of the Legislature itself, as I understand it, the White Paper will expect the Governor-General himself to appoint the Minister who will carry the greatest majority in the House?—Yes.

6984. Does not Sir Samuel think that from the very outset it will be better that the Governor-General should invite that leading personage himself to

accept the responsibility of appointing his colleagues in the Cabinet as the case may be?—I would rather leave it to practice and usage. I am not biased against the kind of development that Mr. Morgan Jones foresees at all.

6985. But if such a man were invited to form his own administration, having regard to the fact that he would depend upon a majority in the Legislature, he would be more likely, would he not, to appoint representatives of the minority groups who would be prepared to co-operate with him and to work successfully with him than if Ministers were chosen by the Governor-General for him?—I think that may be so, and I think that may well be the line of development, but with so many uncertain factors, particularly with the uncertain factor arising from the need of seeing that the Princes are adequately represented and that the minorities are adequately represented in the Government, I would rather leave the picture a free and open picture, without trying to define the situation too rigidly.

6986. But you would contemplate, would you, that any Ministry formed should *ipso facto* be representative of the Princes and minority groups as well?—Yes.

6987. Will not that mean a somewhat heterogeneous kind of Ministry?—It is inherent in the whole system of All-India Federation.

6988. I wonder if you recall the occasion when I think Sir Tej Bahadur Sapru was discussing the question as to whether a Ministry should resign or not when a question relating specifically to the Provinces was before the Legislature, and the problem was as to whether a Ministry should resign, seeing that it had been defeated on a purely provincial problem by an aggregation of votes from the States and the Provinces. You remember the point?—I think the point was upon an exclusively British-India problem rather than an Indian problem.

6989. That is what I meant by Provinces?—Yes.

6990. Do you remember the suggestion which I ventured to make, that, instead of the Minister being called upon to resign upon a defeat of that sort, the Princes should not be expected to vote



upon purely British-India questions, and that, since the Princes had not voted, the Ministry should not be expected to resign?—Here again I think it is one of those difficult questions, the solution of which must be left to usage. That was why I said this morning that I preferred to leave questions of this kind to convention, rather than to definition and statutory enactment.

6991. Do you think it is a wise provision that the Governor-General should when he thinks fit preside over the meetings of the Ministry?—Yes, I do for more reasons than one. I think the reason to which I attach the greatest importance is that I do look to the Governor-General to bring together the two sides of the Ministry, namely, the Counsellors responsible for his Reserved Departments and the Ministers who are collectively responsible to the Legislature, and I believe the Governor-General will provide the most effective bridge between the two sides of the Government.

6992. But for the purpose of developing the idea of collective responsibility would not it be desirable that the Governor-General should absent himself from those Ministries and leave those problems to be decided by his Ministers, reserving to himself, of course, the powers which are reserved?—We have left the Governor-General free to preside or not as he thinks fit, and I think that is really the wise course. I would imagine myself that, at any rate in the early days of the constitution, and I daresay for some years to come, the Governor-General and the Governors will normally preside at their Cabinet meetings and that by doing so, as I said just now, they will make a bridge between the two sides of Government. That seems to me to be a very important duty imposed on them, particularly in the early days of the constitution. How the constitution will develop later, whether it will develop upon our lines, in which it is the Prime Minister only who presides, or not, I should not like here and now to say; but what I will say is that we put no obstacle in the way of development taking place on those lines

Sir Tej Bahadur Sapru.

6993. Is there anything in the White Paper to prevent the Ministers meeting together themselves and evolving their

own policy and then going to the Governor-General?—Obviously under the Constitution we do not control the informal acts of the Ministers. They are at liberty to meet together and discuss things as they like.

Mr. Morgan Jones.

6994. I take it, since this Ministry can be representative of the States and the other parts of British India as well, it is possible for one of the States representatives to become Prime Minister of All India?—Yes.

6995. I would like to ask one question in regard to what I might call a border problem. Suppose there is a State—first of all, let us assume a State which has acceded, which is contiguous with a part of British India, and there happens to be on that border, shall we say, a factory whose employees are in the territory of the State and in the territory of British India. Am I making myself clear?—Yes.

6996. Under this Constitution will it be possible for the Central Legislature to embark upon legislation dealing with the well-being of the inhabitants and workers in that factory who live in the States territory?—What does Mr. Morgan Jones mean by their well-being?

6997. Suppose health legislation, or labour legislation, or education?—Only to the extent that the State has surrendered the appropriate powers to the Federal Government.

Mr. Morgan Jones.] Shall we suppose one that has not surrendered them being contiguous, then do you contemplate that the body of people working in the same factory shall be subject to two sets of laws just because one set happened to be living in the unacceded territory and the others in the British India territory?

Mr. Zafrulla Khan.] Is your supposed factory situate in British India or in the States?

Mr. Morgan Jones.

6998. I will suppose for the moment it is in British India?—If it is in British India it will obviously be subject to British India factory legislation.

6999. But the laws which govern the working hours of the men will apply to the men working in British India, but

not to the men working on the other side of the Border?—No, as far as I understand the position, a factory in British India would, in all respects, be subject to British India factory legislation.

Mr. *Morgan Jones*.] I think I follow.  
Sir *Tej Bahadur Sapru*.] That is so.

Mr. *M. R. Jayakar*.

7000. May I follow that point a little further? Supposing British Indian legislation requires maternity benefits to be given to the working women will that apply to those operatives who are resident in the Indian States, although working in a factory situated in British India?—Only so far as I understand the position, if the States have transferred such powers to the Federal Government. The whole basis of our Federal scheme is that we do not interfere in the internal management of the States except to the extent that they have surrendered powers to the Federal Government.

7001. Therefore, the case will be like this: Assuming the State has not surrendered that power to the Federal Government you will come across this anomaly, that a section of the operatives resident in British India will have maternity benefits accorded to them, while another section resident in an Indian State will have no such benefits, although all the operatives work in the same factory?—I do not see how you can expect not to have anomalies in the kind of conditions that we are contemplating. Whether an actual case of that kind is likely to arise or not I do not know.

Mr. *Morgan Jones*.

7002. May I put a case of a different sort from that I put a moment ago—one which appeals to us on these benches more particularly: the right to withhold his labour, the right to strike, to put it more bluntly. In British India that may be safeguarded; in the State it may not?—My answer is the same. The whole basis of this Federation is that we do not intervene in the internal affairs of the States, except to the extent that those internal affairs are affected either by paramountcy or by the transfer of the powers to the Federal Government. That is the whole basis of this scheme.

7003. You do not interfere in the State; I quite follow that. But if you look at page 15 of the Introduction I may perhaps explain how my question arises. It is paragraph 28: "It may be, however, that measures are proposed by the Federal Government, acting within its constitutional rights in relation to a Federal subject, or in relation to a subject not directly affecting the States at all, which, if pursued to a conclusion, would affect prejudicially rights of a State in relation to which that State had transferred no jurisdiction. Or, again, policies might be proposed or events arise in a Province which would tend to prejudice the rights of a neighbouring State." The point I had in mind was this: Would those particular words imply that since the State would argue that legislation to provide the right to strike would prejudicially affect their interests, therefore, the Federal Legislature may be forbidden by the Governor-General from embarking upon it?—I do not think we were contemplating a case of that kind at all.

7004. But it would be possible?—We are not contemplating the constant intervention of the Governor-General in the field of social legislation on the ground that a particular act of social reform might react badly in a particular State. That is not the kind of contingency we are contemplating.

Mr. *Morgan Jones*.] I am much obliged for that answer.

Marquess of *Reading*.

7005. May I ask one question on what you have said, Secretary of State? If subjects of an Indian State are working in a factory in British India subject to the British-Indian law, would they not, whilst they are working in the factory, be subject to the British-Indian law?—Yes; I am informed that they would.

Mr. *Morgan Jones*.] May I return to the observation of Lord Reading; I do not think he quite met my point.

Marquess of *Reading*.] May I say I was not attempting to meet the point? What I was trying to do was to clear some confusion which had arisen during the discussions by getting that point clear; that was all.

Mr. Morgan Jones.

7006. I ask Sir Samuel Hoare, though it is true that the same legislation will apply to employees either from the States or from British India, in so far as work inside a factory is concerned, when a strike takes place their domicile is in the States or in British India, and, therefore, must not two sets of laws necessarily apply?—I would not like to get into a legal argument on this point; I would have thought only one set of laws would apply in the factory.

7007. Yes, inside the factory, inside the building?—Yes.

7008. But suppose men were on strike, and, shall we say, picketing their fellows in the States, or picketing their fellows in British India. The law may permit it within British India; the law may not permit it within the State?—I think one cannot help anomalies of that kind in any Federation, and I think one might equally find anomalies of a different kind, but, none the less anomalies between one Province and another.

7009. I will not press that further. One more question, and I hope this is not contentious. Will Sir Samuel Hoare please explain to me, as I indicated I would ask him to do to-day, what is involved by these ecclesiastical matters in reserve?—I think it might be a good thing, my Lord Chairman, if I followed the course I adopted at the last Round Table Conference, and put in a short Note as to what we contemplate to be included under the term, "The Ecclesiastical Department." Short, however, of putting in this Note, I would say, generally speaking, in answer to Mr. Morgan Jones, that we contemplate a Department that will provide adequately for the spiritual ministrations of the Army and the British Services. Over and above this provision, there are, under existing conditions, certain chaplaincies and certain branches of expenditure, not at all big branches of expenditure, nor numerous chaplains, whose duties, it might be urged, are principally for the British population outside the British Army and the British Services. Obviously, we could not suddenly bring to an end ministrations of that kind, but we should aim our policy at restricting the Ecclesiastical Department specifically

to the British Services and the British Army, and in a space of time, we should reach that position. In the meanwhile there would be some of these quite small expenses that might go on for a period of time, but they would be expenses that would be coming to an end.

7010. But they would fall upon public funds of India?—As they do now.

7011. How much is involved, can you tell me?—Quite a few thousands a year, it would be, and a diminishing sum.

Sir Abdur Rahim.

7012. 30 lakhs?—But it is not 30 lakhs, in answer to Mr. Morgan Jones' question, Mr. Morgan Jones was asking the question how much of this expenditure is not exclusively for the Army and the British Services. My answer is that it is a very small sum.

Sir N. N. Sircar.

7013. The Secretary of State was asked to consider the case of a factory provision in India and men and women being residents of a neighbouring State and certain so-called perplexities and anomalies were pointed out to him. May I ask him whether those perplexities and anomalies do not exist now to-day if the facts given by Mr. Morgan Jones are assumed? Are we not in exactly the same position?—I should think in exactly the same position.

7014. May I take it that the Secretary of State will agree that, as regards the perplexities and anomalies, Federation or no Federation has nothing to do with it?—If Federation has anything to do with it, I would have thought that Federation would help to remove rather than to intensify anomalies of that kind by bringing people together.

Earl of Derby.

7015. Does not that anomaly occur almost every day on the Frontiers of the European Continent?—Everywhere.

Dr. B. R. Ambedkar.

7016. Arising out of the questions that were put by Mr. Morgan Jones regarding the pledges, you stated that no responsible statesman in this country has bound

himself to time and pace. Is that so?—Yes.

7017. But I think there is a general agreement that the ultimate goal of India's Constitution is to be Dominion status?—It has constantly been so stated.

7018. So that on the question of the ultimate goal, there is really no dispute?—That would be so, yes.

7019. Now what I want to ask you is this: In view of that, would you be prepared to put this in the Preamble to the Government of India Act, that the ultimate goal of India's Constitution would be Dominion status, leaving the question of the time and the pace to be determined by circumstances as they arise?—I do not think here and now I would like to give a pledge as to what is or is not put in the Preamble of an Act of Parliament. I, myself, am prejudiced against Preambles of Acts of Parliament, for reasons good or bad, and I would rather say neither yes nor no to Dr. Ambedkar's question. It is a point that ought to be considered by the Committee. I would not regard it as a question of principle, one way or the other; I think it is essentially a matter for discussion. Upon the face of it, I am against these general declaration in Preambles.

7020. I want to say this, that this is not a point in dispute now, and, in view of the fact that it would have a reassuring effect on the Indian people, it would be desirable to have this embodied in the Preamble to the Government of India Act?—We must take note of what Dr. Ambedkar has said upon the point.

7021. Now the next question that I propose to ask you is with regard to the date of the Federation; that in view of certain uncertain elements connected with the entry of the Princes into the Federation, it was not desirable to give a date for the inauguration of the Federation. Now the point that I propose to put to you is this: What would you say to a proposal like this—I am making it as my own: Supposing you started the Federation without waiting for the Princes, and had a nominated *bloc* appointed by the Viceroy or the Governor-General, it may be from officials or non-officials, it may be partly from officials and partly from non-officials, and then inaugurate your Federation, and then, as the Princes come in, eliminate the nominated *bloc* to

make room for such Princes as begin to come in? Have you any objection to a proposal of this sort?—Yes, I have several objections to it. I think that, perhaps, the strongest that occurs to me off-hand is that it is a completely new one. Here for the last three years we have been considering no other kind of Federation than an All-India Federation, with the Princes adequately represented in it.

7022. Quite true, but let me pursue this point?—May I just finish my answer? Secondly, I would say, even apart from that every formidable objection, an objection that would mean that we should have to start all our discussions over again, there is the further objection that I do not see what is to happen supposing when you had got your nominated *bloc*, the Princes then do not come into the Federation at all.

7023. I will put my next question. You want the Princes' representation as a stabilising element?—No; more than that, Dr. Ambedkar; I would not restrict myself to that at all. I want the Princes' accession for a number of reasons. I believe, quite apart from the stabilising effect of the Princes' representation, they can bring into the Government of India many very valuable influences.

7024. But my point is this. I am not making this suggestion as a permanent part of the Constitution. I am making the suggestion for the transitional period until the Princes come in. I am only trying to get over the difficulty that you would say would arise if the Princes do not make up their minds to come in a stated period. I am only trying to get over the difficulty as to date?—I quite see that. None the less, with the best will in the world, I do see the very formidable objections that I have just mentioned to a transitional plan of this kind.

[Nawab Sir *Liaquat Hayat-Khan.*] In any case, if I might interject, had that not better be brought out when you meet again, in the event of such a contingency arising. It has been promised that when a contingency arises we meet again. I think a suggestion of that nature would be more appropriate then rather than now.

[Sir *A. P. Patro.*] You will not be there when it comes.

*Witness.*] I have always thought that it is really a great mistake, particularly for those who are really interested in setting-up an All-India Federation, to concentrate upon setting up some kind of provisional government upon the assumption either that Federation is never coming into existence, or that Federation is only coming into existence in the very indefinite future. I believe myself that Members of the Committee and Indian Delegates who make proposals of that kind, although they do not wish the result of their proposals to be in the least what it will be, are really putting Federation further and further into the distance. I only go on repeating my own opinion, and I must rely upon my British and Indian friends to see that time after time it is not misrepresented by our enemies outside.

*Dr. B. R. Ambedkar.*] May I pursue this a little further. Do you think Federation is more important, or responsibility is more important ?

*Sir Tej Bahadur Sapru.*

7025. Or neither ?—I do not see the point of Dr. Ambedkar's question.

*Dr. B. R. Ambedkar.*

7026. My point is this : If you are not prepared to consider any alternative for a transitional period the conclusion is that there can be no responsibility unless there is Federation ?—Really now Dr. Ambedkar is raising issues that we have been discussing for three years. For three years we have assumed in every discussion we have had that these proposals are based upon a foundation of All-India Federation, and I am not prepared to-day, after three years of these discussions, to reopen this question.

*Dr. B. R. Ambedkar.*] It is true. I do not want to pursue the matter. I am only suggesting an alternative for your consideration. I have two more questions to ask, but I do not know whether they will be within the ambit of the topic we are discussing. One is in relation to the qualifications of candidates for the Federal Upper Chamber.

*Archbishop of Canterbury.*] I think that would more properly come under franchise, would it not ?

*Dr. B. R. Ambedkar.*] I would like to ask a question or two about financial safeguards.

*Archbishop of Canterbury.*] I think that clearly comes within finance.

*Dr. B. R. Ambedkar.*

7027. I want to ask a question or two about defence. You remember that the Sub-Committee on Defence in its report recommended that there should be a Military Council. I do not find any proposal in the White Paper dealing with that ?—For the very good reason that we do not think that is a Constitutional proposal. It is an administrative proposal.

7028. Are you going to have it ?—I have always myself been in favour of having in India something in the nature of the Committee of Imperial Defence here. I believe in actual practice it will be found to be necessary. It is very important to bring not only the Defence Ministers, and the Defence officials, in touch with Defence problems, but now that Defence covers so very wide a field of the life of a nation we have found here it is of great value to have a Committee of some kind in which the appropriate Ministers can be had in for specific discussions, and there is a strong body, not only of civil opinion, but also of military opinion in India that is in favour of the development of some such Committee as this, but essentially it is an administrative question rather than a question that can be dealt with in an Act of Parliament.

*Marquess of Salisbury.*

7029. It would be a purely advisory body, I suppose ?—Yes, as the Committee of Imperial Defence is here.

*Sir Tej Bahadur Sapru.*

7030. Perhaps Sir Malcolm Hailey would be prepared to say is not there something of that kind now ? There used to be something of that kind in the time of Lord Chelmsford. I attended some of the meetings ?—I went into this in some detail with the gentleman who probably knows more about the Committee of Imperial Defence than anybody else, namely, Sir Maurice Hankey, and he and I both agreed that there was a line of very useful development to be followed

in India very much in the kind of way that we followed it here, namely, a very elastic body with certain members that practically always attend; other members had in for specific discussions, and the body always being as the Committee of Imperial Defence is here, an advisory and not an executive body.

Sir C. P. Ramaswami Aiyur.

7031. Are there not the beginnings of such a system now?—I think so. I think from the discussions I have had the Commander-in-Chief and the senior officers in future would find such a body very useful.

Sir Tej Bahadur Sapru.

7032. My impression is that at the time of Lord Chelmsford there was such a body, and Sir Malcolm Hailey used to go in as Finance Member?—(Sir Malcolm Hailey.) That was mainly for considering cases in connection with Waziristan, and the Chief of the General Staff and various other officers used to come in and discuss it with various officers of the Executive Council.

Sir Tej Bahadur Sapru.] That is my impression.

Dr. B. R. Ambedkar.

7033. With regard to the reserved subjects, you do not propose to make that part of the budget votable?—(Sir Samuel Hoare.) That is so.

7034. That is opposed to the theory of Reserved Departments as it exists now under the Government of India Act?—It is based upon all our previous discussions, and I thought, although there was a good deal of discussion at the Round Table Conferences about certain features of Defence, there was a very general agreement upon the point that the monies should not be votable.

7035. Do you see any very great danger if the Legislative Assembly vote upon it, and the Viceroy had the power to certify, if he found any drastic cut was made?—I think it is better in a matter of this kind, in which the responsibility of the Viceroy is clear and unquestioned, that whilst opportunities should be given for discussion, the necessary expenditure should be non-votable.

Dr. B. R. Ambedkar.] The next question is with regard to the appointment of the commander-in-chief. I do not find any specific proposals dealing with that in the White Paper. Section 19 of the Government of India Act merely states that the commander-in-chief shall be appointed by His Majesty by Warrant under the Royal Sign Manual.

Sir Tej Bahadur Sapru.

7036. It is a curious accident that in the present Government of India Act there is no reference to the appointment of the commander-in-chief. All it does is to provide that if the commander-in-chief is a Member of the Executive Council he shall take precedence over the other Members of the Executive Council?—Whether there are provisions in the White Paper or not, it is intended to continue the appointment of a commander-in-chief.

Dr. B. R. Ambedkar.

7037. Section 19 (1) of the present Government of India Act says: "The Commander-in-Chief of His Majesty's forces in India is appointed by His Majesty by warrant under the Royal Sign Manual."?—Yes; that would probably go on in much the same way.

Lord Irwin.

7038. Is not the matter referred to in Proposal 6 at the foot of page 39 of the White Paper?—Yes, paragraph 6, page 39.

Dr. B. R. Ambedkar.

7039. Paragraph 6 does not say how his appointment is going to be made—on whose advice?—By the Crown.

7040. On whose advice?—The appointment is made by the Government here.

Sir Austen Chamberlain.

7041. By His Majesty acting on the advice of Ministers at home?—Yes.

Dr. B. R. Ambedkar.

7042. I looked up the other day the Debates in the Legislative Assembly dated the 17th February, 1921, and Sir

Godfrey Fell described the circumstances under which the Commander-in-Chief was appointed in these terms : "The appointment of the Commander-in-Chief is made by His Majesty the King on the advice of the Cabinet, and the Cabinet naturally turns to the Chief of the Imperial General Staff, the highest military authority in the British Empire, for advice." So the position is that the Commander-in-Chief under the present law or practice is appointed by the Cabinet on the advice of the Chief of the Imperial General Staff ?—He is not appointed by the Cabinet; he is appointed by the Crown, on the advice of the Prime Minister, or whatever it may be—the Secretary of State for India here.

7043. The point I want to put to you is this : Do you think this practice is consistent with the new sort of Government we are contemplating, considering that Defence is to be largely a responsibility of the Indian people and the Indian Legislatures ?—I think it is quite

inevitable with Defence a reserved Department.

7044. But it is also going to be a responsibility of the Indian people and the Indian Legislatures. How is the appointment of an important officer who is going to be in charge of a very important Department under the new Government, who is appointed not on the advice of the Secretary of State, not on the advice of the Governor-General, but on the advice of the Cabinet in consultation with the Chief of the Imperial General Staff, compatible with a Government whose Defence will be a responsibility of the Indian people ?—Surely, if Defence is a Reserved Department the Government to whom those reserved Departments are responsible should make the appointment.

7045. I can understand the Viceroy making this appointment; I can understand the Secretary of State making the appointment ?—That is what it comes to.

*(The Witnesses are directed to withdraw.)*

Ordered, That this Committee be adjourned to Thursday next, 10.30 a.m.

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20th July 1933.

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Present :

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl Peel.  
 Lord Ker (Marquess of Lothian).  
 Lord Hardinge of Penshurst.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.  
 Major Attlee.

Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaquat Hayat-Khan.  
Sir Akbar Hydari.  
Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
Sir P. Pattani.  
Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.  
Sir C. P. Ramaswami Aiyar.  
Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Mr. A. H. Ghuznavi.  
Lt.-Col. Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. Rangaswami Iyenger.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.

Begum Shah Nawaz.  
Sir A. P. Patro.  
Sir Abdur Rahim.  
Sir Tej Bahadur Sapru.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Sir N. N. Sircar.  
Sir Purshotamdas Thakurdas.  
Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., and Sir JOHN HENRY KERR, K.C.S.I., K.C.I.E., are further examined.

*Chairman.*

7046. Sir John Kerr, you are late of the Indian Civil Service, now retired. I think the last office which you held in India was that of Governor of Assam ?—  
(Sir John Kerr.) Yes.

7047. Secretary of State, I think you might wish to describe the circumstances in which you have asked Sir John Kerr to attend with you to-day ?—(Sir Samuel Hoare.) My Lord Chairman, I have brought with me to-day Sir John Kerr particularly to deal with the more detailed questions about the Franchise. It seemed to me that, first of all, with his administrative experience, and, secondly, with his experience on the Franchise Committee he could deal with a number of questions that I feel sure will be asked, namely, as to whether administratively the kind of scheme contemplated in the White Paper is practicable. I would therefore suggest to the Committee and the delegates that he should deal with questions of that kind. When, however, questions of more general policy arise then I can deal with them.

7048. I think, Sir John Kerr, that you  
Chairman of what is called

the Lothian Committee on the franchise ?  
—(Sir John Kerr.) Yes.

7049. Do you hold any official position at this moment ?—No, none at all.

*Marquess of Salisbury.*

7050. Secretary of State, I think you do not follow in the White Paper absolutely the Lothian Report, but in its main outlines you do ?—(Sir Samuel Hoare.) That is generally so.

7051. In particular for the Federal representation you, in the White Paper, have selected direct election for the Central Assembly ?—Yes.

7052. Of course, I need not remind you that there have been a great deal of questions about that. Do you look upon that as an open question, whether it should be direct or indirect ?—It is difficult to say exactly what is an open question. I would certainly say it is a question upon which there is bound to be a difference of opinion. There always has been a difference of opinion. The whole history of the question shows how at one time there has been the chief support for one alternative and at another time for



the other. We have had many discussions about it at the Round Table Conferences, and Sir John Kerr will tell you that his Committee considered the issues in some detail, and, as a result of all these discussions we have come to the view that we do not see a practicable way by which we can surmount the very formidable obstacles to indirect election.

7053. I will assume for the moment, at any rate, that the direct representation so far as the White Paper is concerned holds the field?—Certainly; I am here to defend the proposals of the White Paper:

7054. Then I would ask either you or Sir John whether you have considered the full arrangements for the marshalling of this large body of electors? Do you provide anything which corresponds, for example to revising Barristers in India?—(Sir John Kerr.) The question of revising the roll was not specially before us. It was more the initial preparation of the roll that we were concerned with, and in every Province we satisfied ourselves by discussion with the local Governments and the local Provincial Committees appointed by the Provincial Legislative Councils that it would be practicable to prepare a Voters' Roll for the electorate which we suggested for adoption.

7055. You are aware that the preparation of the roll is a very complicated matter in England?—I do not know that it is any more complicated in India.

7056. No, I do not imagine that it is, but I want to know whether you can make corresponding provisions in India when you are dealing with this large body of electors?—The roll which we suggest is based as to 90 per cent. of the voters on a property qualification, and in the rural areas the property is entirely land. We have in every province in India no elaborate land registration system which provides a most convenient basis for the preparation of a roll of this kind based on the land held by the voters.

7057. Of course, in England there are registration agents employed under the modern system by the Government and Party agents to watch the registration agents, and revising Barristers to see that no injustice is done. Have you considered anything of that kind. for proper precautions that the Register is right?—

Yes. We have had a roll of this kind for the last 14 years since the Montagu-Chelmsford reforms came into operation. There is a responsible officer in every district or sub-division of a district whose duty it is to provide the roll on the basis of the Land Registers which I have mentioned, and the candidates and their supporters do, in a great many cases, take a great amount of trouble to see that only those people who are entered on the roll who are entitled to be entered according to the qualification.

7058. I do not want to take up unnecessary time, but may I put this question? Are you satisfied that under those arrangements no injustice will be done?—Yes, I am.

7059. As regards the polling districts, the constituencies are very large, are they not?—The Provincial constituencies are not very large.

7060. I am speaking of the constituencies for the Central Assembly?—Yes, they are very large indeed.

Marquess of Salisbury.] About 1,700 square miles, I think, on the average.

Lord Hardinge of Penshurst.] 3,500.

Marquess of Salisbury.] More than that?

Marquess of Zetland.] Much more.

Lord Hardinge of Penshurst.] 3,500.

Marquess of Salisbury.] I am told the average is 3,500 square miles.

Marquess of Zetland.] With Lord Salisbury's permission may I call attention to what the Franchise Committee themselves said about that?

Marquess of Salisbury.] My noble friend knows it much better than I do. I shall be very glad of his help.

Marquess of Zetland.] The Franchise Committee say: "The constituencies under our proposals, while varying greatly in size, will, in the country districts, average between 5,000 and 10,000 square miles in area." I may say that some of the constituencies will be enormously larger than 10,000 square miles.

Marquess of Salisbury.] My noble friend will help me very much if he will tell me how large they will run to?

Marquess of Zetland.] In the Punjab I think the general constituencies will run

to over 17,000 square miles on the average.

Marquess of *Salisbury*.

7061. I think that is the mistake I made. I should have said 17,000 and not 1,700. They are very, very large. Have you considered how many polling districts will be necessary to deal with these enormous constituencies?—We endeavour to arrange that nobody shall have to walk more than 10 miles to the poll. That is what we aim at.

7062. You think they will walk 10 miles to the poll. They would not in England?—In India they have to. They have to walk to their markets as a rule once a week. Eight or ten miles is nothing to them.

7063. Do you really think there will be an adequate representation of the people if they have to walk 10 miles to the poll?—There is under the existing arrangement. There have been elections during the last 14 years in which there have been very good attendances on the whole at the elections, and the percentage of voters who have actually voted has increased, I think, at every election.

Marquess of *Salisbury*.] What was the figure at the last election?

Mr. M. R. *Jayker*.

7064. Fifty-five to 60 per cent.?—Forty-six per cent. in the year 1926, and it has now, I think, gone up to well over 50 per cent.

Marquess of *Salisbury*.

7065. There has been an election since 1926, has there not?—Yes.

Mr. *Isaac Foot*.] Fifty per cent. is about the ordinary poll in London for a Parliamentary election, and less than that for Council elections.

Marquess of *Salisbury*.

7066. Upon which Exchequer will the expenses of these elections fall?—It falls at present entirely on the Provincial Governments.

7067. Have you any estimate of how much a General Election for the Centre will cost?—I do not think we have an estimate for the Centre alone, but in

Appendix VI of the Franchise Committee's Report there are a considerable number of calculations as to the probable cost of these elections. Of course, under the Lothian scheme the main cost will be in respect of the Provincial Councils.

7068. Can you give the Committee any figures?—(Sir *Samuel Hoare*.) I am informed that the additional cost for the election of the Federal Legislature—

7069. The additional cost?—That is over and above the present cost of an election for the Indian Central Legislature; the additional cost is 12 lakhs.

7070. Perhaps I ought to address this to the Secretary of State. You are aware that the almost universal rule of these representative systems is that the franchise is gradually extended?—Yes, that has been so here, anyhow.

7071. So we must anticipate that the Indian franchise will be extended?—I should think that will be a reasonable anticipation.

Marquess of *Salisbury*.] In fact, one of our colleagues on the Delegation—Mr. *Joshi*—indicated at an early stage that he looked forward at an early date to having an extension in the franchise. He will correct me if I am wrong.

Mr. *Joshi*.] You are quite right, my Lord.

Mr. M. R. *Jayker*.

7072. Have the Government contemplated how they will deal with an extended franchise on these lines with the vast masses of India?—We have felt that it was our duty to make what we consider reasonable and manageable proposals for a period of time. After that everybody is equally entitled to make what prophecy he likes. Our proposals are based upon what we consider to be manageable for a period of time. After that the question must be considered upon its own merits.

7073. Is not that a very short-sighted policy? After all, we are providing a Constitution, I suppose, for a very long period?—What other policy could anybody adopt?

7074. Will the Secretary of State reflect that for the Central body it is, I think, 2 per cent. only of the population, or between 2 and 3 per cent. of the population who are enfranchised, and that amounts to something like 8,000,000

electors. Supposing that franchise has to be extended, as the Secretary of State has agreed is very likely to be the case, how will this framework which we are creating work, when you consider that the population under adult franchise, if it came to adult franchise in British India alone, would be 130,000,000?—(Sir John Kerr.) May I answer that? Under the Lothian scheme the Provincial electorate will number 36,000,000. The Lothian Committee was satisfied that the staff existed which could manage an electorate of that size. If the Federal electorate is increased from 8,000,000 to 36,000,000 very little addition to the present staff would be necessary to manage the Federal Election in addition to the Provincial Elections on that scale, and, generally speaking, I would say that I do not think there is any reason to anticipate that there will be more difficulty in India of handling enlarged electorates from time to time; there should be no more difficulty in India than there has been in England. The sort of staff which handles these electorates is a staff which can be increased without any serious difficulty. There will be a certain amount of expense, of course, but no serious expense and no serious difficulty in having an enlarged staff to meet an increased electorate as time goes on.

7075. Did not the Lothian Committee itself find that it would be impracticable to deal with more than 20 per cent. of the population?—Yes, I think so, certainly.

7076. How does that fit in with your answer to me, that it does not matter how much you enlarge it, it would always work?—The present electorate in the Provinces is only seven millions. From seven millions to a hundred and thirty millions at one jump is obviously a very large step forward.

Marquess of *Salisbury*.] If it is more than 20 per cent., according to your own report it would become impracticable.

Marquess of *Lothian*.] I think you have misunderstood the question. The Franchise Committee never said it would be impossible to poll more than 20 per cent. of the population. That is the question Lord Salisbury asked.

Marquess of *Salisbury*.] I must not take up time by pursuing it. I must look up the passage.

Sir *Austen Chamberlain*.] I hope Lord Salisbury, in his anxiety to facilitate business, will not cut his questions down too much. These are very important questions. Since we have had the Secretary of State present we have probably done more useful work than at any previous time.

Marquess of *Salisbury*.

7077. The Committee will realise how anxious I am to be as useful as possible. This is the passage which I referred to. It is on page 17 of Lord Lothian's Committee's Report: "Finally, after discussing simplified polling methods with officials in every Province, we are faced by the fact that, without a single exception, every one of the Provincial Governments and of the Provincial Committees has not only declared that adult franchise is administratively impracticable to-day, but has placed the maximum of administrative practicability at some figure below 20 per cent. of the total population, corresponding to very much less than half of the adult population." That was the passage in my mind, and I put it to Sir John that that shows that there is certainly a limit, and a very definite limit, beyond which it would be impossible to poll vast masses of the electorate?—I think we are thinking of the conditions as they exist at present. The present electorate, as I said, is only 7,000,000, and to jump from 7,000,000 to 130,000,000 straight off was, in our judgment, impracticable. But we did not mean to imply that you could not work up to adult suffrage of 130,000,000 gradually.

7078. So you really contemplate that it would be possible to poll 130,000,000?—Not immediately—in the future.

7079. I do not mean the dim and distant future, but in some reasonable period of time. Of course, no one can say what will happen three hundred or four hundred years hence, but I mean within a reasonable period of time?—We thought it would be impossible to poll more than this 36,000,000 that we proposed without an inordinate increase of the staff.

7080. Do you not think that the natural conclusion from that is that if you have this vast population, one-fifth of the human race altogether, and you are proposing to create a system under which they shall have an elected Assembly, it is very unwise to begin by adopting a system of direct election, which, presumably, cannot work except with a small number?—I do not think we meant to say that at all. What we did say was that for various reasons we preferred the direct system to the indirect system, and that we must impose on the grounds of immediate practicability some limits on the electorate.

7081. I will not go any further into that; other Members of the Committee will pursue it, no doubt, and will draw their own conclusions from what you have said. May I ask you about the ballot? I know that the Lothian Committee considered the question of the ballot very carefully, did they not?—Yes.

7082. Do you think it would be easy to work the ballot with the enormous proportion of illiterates which there are in the electorate?—We recommended a special system of voting which is called the coloured box system. It has been in force in parts of India for a great many years in municipal elections. The Southborough Committee which framed the franchise in 1920 for the Montagu-Chelmsford Report, referred to that system with approval as very suitable for recording the votes of an illiterate population. It has been worked in Ceylon where the electorate numbers 65 per cent. of the population and it has been worked there with remarkable success. We took evidence on that point, and it is recorded in our Proceedings.

7083. But you are aware, Sir John, that there are much fewer electorates in Ceylon than there will be under this system?—Of course, Ceylon is a much smaller place in every way, in population and area, and all the rest of it.

7084. But the proportion of illiterates is much smaller in Ceylon than it will be here?—Yes, that is so; 50 per cent., I think it is.

7085. And how many illiterates will there be under the White Paper proposals for the Central Assembly?—For the Central Assembly, there need not necessarily be any. There are between

12,000,000 and 15,000,000 literate in India, and the electorate for the Federal Legislature will number only some 7,000,000 under the Lothian proposals; so that, the proportion of the illiterates for the Federal Legislature will not be large.

7086. And on the Provincial Legislature?—On the Provincial Legislature, it will be considerable. The male electorate under the Lothian scheme, under the White Paper scheme, will number about 30,000,000 so that about half of these will be illiterate.

7087. You say half of the Provincial electorate?—Half of the Provincial electorate will be illiterate.

7088. Have you satisfied yourself that this coloured box method of determining the votes is likely to give a well considered judgment on a set of political issues?—There is no difficulty at all in getting the illiterate voters to understand a mechanical method of putting their paper into a box of a particular colour.

7089. Will they understand from the particular colour the sort of political questions which are submitted to them?—They understand they are voting for A or B, whoever it is, and they know in a general way at present that A is a landlord and stands for the landlords' point of view, and that B is perhaps the vakil from Headquarters who has taken up the cause of the tenants. There is not the slightest difficulty in getting any illiterate cultivator in India to understand that and to vote accordingly.

7090. And you think that those will be the only simple issues that will be submitted to the electors, that they are to vote for the landlord or the vakil?—I do not say those will be the only ones, but in the Provinces, for the Provincial Councils, that will be the most important one.

7091. And for the Central Assembly, too?—No. The Central Assembly will have very different questions to deal with, but the electorate there will be very much smaller.

7092. Then, as regards the polling, you have got to deal with a large number of women, have you not?—Yes.

7093. It is rather difficult to express it properly. It has been suggested to

you that there would be great difficulty in administering the law against personation in the case of the women?—Yes; there is some trouble about that undoubtedly.

7094. By the usual practice in India, the women are not generally known by sight?—No.

7095. Is that so?—That is so, of course, in the towns, and the women of the upper classes, but with regard to the village women, the sort of women who will get the vote for the Provincial electorate, there will in most cases be very little practical difficulty in identifying them.

7096. I should have thought it would have been a very difficult thing with a veiled woman, I must say?—You will have to take the husband's word for it, in most cases, but the neighbours, and people of that kind, would be well aware of any attempt to defraud the public.

*Lord Hardinge of Penshurst.*

7097. But a man may have more than one wife?—He may; then only one wife's name will be on the roll.

7098. The wrong wife might vote; if she is put down as the wife of So-and-So, the wrong wife might vote?—You would have to put down the name in that case, and you would have then to trust to the husband or relative who brought her that she was the right woman.

*Marquess of Salisbury.*

7099. Altogether, it is clear that the system such as we know it in England will work with great difficulty in India?—No, I would not say that. I think in these village polling booths, there are lots of people all around, and there is no great difficulty in preventing personation either of men or women. They do not do things in a hurry at these places; it is all done in a very leisurely sort of fashion, and there is plenty of time for people to look around.

7100. Of course, I have no experience of India, but I have considerable experience, not a greater experience than most of my friends, of the difficulties of electing Members of Parliament in England, and I know it is a very difficult and elaborate process. I suggest to you that these crude methods of the

coloured box which was practicable in Provincial elections is not likely to produce very accurate results in India?—I have only voted at one election in England, but I must say it did not strike me that the methods adopted were very elaborate. The Parish Clerk was in charge, and he had a few people of that kind to assist him, and the whole thing seemed to be going very smoothly. That was in the country, of course.

7101. The whole thing is surrounded by agents of the proper kind. I have one further question to put to the Secretary of State. The Central Assembly represents a little more than 2 per cent. of the population—between 2 and 3 per cent., I think?—(Sir *Samuel Hoare.*) Yes, almost 3 per cent.

7102. And the Council of State, being elected indirectly, will represent about 14 per cent. of the population?—Lord Salisbury will remember that the Council of State is elected indirectly by the Provincial Councils.

7103. That is why they will represent 14 per cent. indirectly of the people?—Yes.

7104. Perhaps I had better put it a little more clearly: The ultimate voters for the Legislative Council will be 14 per cent. of the population. The ultimate voters for the Assembly will be only 2 or 3 per cent. of the population?—Yes, always remembering that the election for the Council of State is not only indirect but it is also an election by units, namely, by the Members in the Provincial Councils.

7105. But it does not alter that numerical point, which I put to the Secretary of State?—No, I do not say that it alters it, but it does not seem to me to be very relevant to it.

7106. So the Council of State is really the more democratic of the two?—Lord Salisbury can draw what deductions he likes about it. I should not draw that deduction from it.

*Mr. Rangaswami Iyenger.*

7107. I desire to put to the Secretary of State this question: In claiming that because Members of the Provincial Legislative Council elect representatives to the Upper House of the Federal Legislature, is it not the case that the primary voter, the 14 per cent. of whom

my Lord Salisbury refers to, does not cast any vote for any member of the Second Chamber as such, but he only elects the Members of the Provincial Council on Provincial issues and for Provincial purposes, and that the Provincial Legislature is treated as an electoral unit for getting Members to the Second Chamber? That the primary elector is not really interested in the election to the Council of State?—That is so. For the purpose of the Council of State, the Provincial Assembly becomes an electoral college.

*Sir Hari Singh Gour.*

7108. May I put another question arising out of the question just put to and answered by the Secretary of State? Is it contemplated that Members of the Provincial Council electing for the Second Chamber in the Central Legislature will act upon any mandate given to them by the electorates as to the person for whom they should vote?—I should have thought not, but I do not think one can say exactly how it will happen in every Province.

7109. But under the Constitution as framed, they are not expected to act upon any mandate given to them?—No. They are an electoral college free to make what selection they like.

*Sir Akbar Hydari.*

7110. Would there be any difference in the class of parties for which the Provincial Legislature electors will cast their votes and the parties which will be in the Central Assembly? Will there be any difference in parties?—It is very difficult to prophesy. I would have thought myself that whether there are differences of parties or not, there will be differences of questions.

7111. But will it not be just exactly as it was stated by Sir John Kerr, that the village elector will cast his vote to see whether this is a man who represents the ryot and comes from the ryot class, or whether he is a man who is a vakil who has got the ryots' interests at heart. That will be the sort of consideration on which he will cast his vote for the Provincial Legislature. Will it not be that when he comes to cast his vote for the Central Legislature there will be the same considerations and nothing else? There will not

be any real issues of the questions which are distinctly in the Provincial Legislature and distinctly in the Central Legislature which will guide them?—I think it is very difficult for me to give an opinion in answer to a question of that kind, and I do not think any opinion I gave would be any better than anybody else's opinion. I would restrict myself to saying that there will be different questions with which the two Legislatures will be dealing, and, secondly, that the primary voter in the village will not be nominating in any way the representative for the Council of State. The Provincial Council will, as I said just now, be an electoral college for that purpose, and how exactly it will carry out its duties and what kind of people it will elect, I think must depend upon the circumstances at the time in the particular Province.

*Marquess of Salisbury.*

7112. May I take the Secretary of State to paragraph 19 of the White Paper, page 11? I understand that when the White Paper was written no arrangements had been come to as to the allocation of the seats amongst the Princes?—No final arrangement.

7113. Is the Secretary of State able to add anything to that information, since the White Paper was printed?—No. I do not think the situation has substantially changed. I have always felt that it was for this Committee to settle, first of all, upon the size of the Federal Legislature, and, secondly, upon the percentage of seats to be allocated between British India and the Indian States; and that further than that, it was for the Princes themselves to say how they thought that percentage of seats should be allocated between them.

7114. But will not there be any provision in the Bill which the Government intend to follow on this Committee as to the allocation of seats amongst the States?—I think very likely, ultimately, there will have to be an appendix showing how the grouping will take place.

7115. How can there be an allocation of seats as between the States until it be known how many States are going to join?—I do not think the one is dependent on the other, but what is a

necessary and precedent condition is that the States should know what is to be the size of the Legislatures and what is to be their percentage of seats.

7116. I understand from what the Secretary of State has just said that these seats are to be allocated by an arrangement amongst the Princes?—Yes.

7117. If there are only 50 per cent. of the Princes in the Federation, how are the whole body of the Princes to determine how the seats shall be allotted?—I am contemplating that the allocation would be made upon the assumption that all the Princes were coming in.

7118. Therefore, only the Princes who come in will be called upon to decide how the seats are to be allocated?—No, certainly not. We are now in the process of negotiating with the Princes about the allocation, and the basis of that negotiation is that the Princes are all coming in and all the Princes, big, small and of medium size, are interested in these discussions.

*Sir Austen Chamberlain.*

7119. In other words, as I understand the scheme, the scheme which you contemplate will be a complete scheme making room for the entry of all the the Princes?—Yes.

7120. But I think you indicated the other day that you contemplated having some provisional arrangement to tide over the time between the entry of the minimum of Princes who may come in at once and the arrival of the others who may come in only gradually and much later?—Yes.

*Marquess of Salisbury.*

7121. Let us put a case. The figures are quite unimportant, but supposing 50 per cent. only of the Princes come in, how are you going to get the other 50 per cent. to take their share in determining how the seats are to be allocated?—Because the allocation arrangement would have been made precedent to that situation.

7122. The Secretary of State would be prepared, no doubt, to make a complete scheme covering 100 per cent. of the Princes?—Yes.

7123. But supposing 50 per cent. of them will not join you in that discussion, how will you be placed?—We shall be placed with the other 50 per cent. coming in according to the groups in the grouping system that we have made for the whole 100 per cent.

*Sir Austen Chamberlain.*

7124. Did you not say the other day that you would in that case contemplate some weightage, some addition, to the representation of the seats coming in, so that those Princes who did come in might have a reasonable proportion of the Legislature?—Yes.

*Marquess of Salisbury.*

7125. Your plan, as I understand (or I ought to say the plan you prefer of three plans), was to add to the representation of the Princes already in the Assembly a proportion of the other Princes' representation on the same proportion as those already admitted. Is that so?—I do not know what Lord Salisbury means by saying "upon the same proportion as those already admitted."

7126. I understand one of the States which came in would have, say, 10 seats?—I see what Lord Salisbury means. I think very likely it would work out on those lines.

7127. There is only one other question I want to put as regards the Provincial distribution, that is to say, the distribution of seats in the Provinces. He is aware, of course, that there is a great deal of difference of opinion on that. I am not going into the difference of opinion, as to whether the Communities are properly represented in Bengal under the Poona Pact. I am not going into it; but I am going to put this question to the Secretary of State: Whether he has any statement at all to make upon that subject?—Upon the Communal decision of the Government?

7128. In the case of Bengal, I am speaking especially?—No. I have nothing to add to the Memorandum that I circulated to the Committee and Delegates on the 26th May upon the Government's Communal decision. The Government made it quite clear that they regarded their decision as final and they

were only prepared to accept a variation if it was clear to them that the variation had been agreed by the accredited leaders of the various Communities; and, as a Member of the Government, I am not prepared to add anything fur-

ther to that statement of Government policy.

*Chairman.*] Secretary of State, do you desire to hand in the Memorandum to which you have just referred?—Yes, the Memorandum is as follows:—

#### MEMORANDUM.— COMMUNAL AWARD.

I think it may be useful to my colleagues on the Joint Select Committee who have not been familiar with the developments leading up to the White Paper, if I give for their information a very brief account explaining the scope of what is known as the "Communal Award," the history of its origin, and why it stands, so far as the Government is concerned, on a different footing from the other proposals in the White Paper.

2. Both the first and second sessions of the Round Table Conference found progress much impeded through the failure among the Indian delegates to reach mutual agreement both on the number of seats which the various great communities in India were to secure in the Legislature and on the method of election to those seats. The main issue as regards election was whether separate electorates were to be maintained or the system of joint electorates with reserved seats employed. (For an explanation of these terms see paragraphs 149 and 150 of Vol. I of the Statutory Commission's Report.) Repeated failure, after many attempts, to reach agreement on these problems had not only left this vital gap in the Constitution as so far outlined, but was preventing some of the minority communities from proceeding any further with discussion of other aspects of the Constitution which had a communal bearing until they knew where they stood as regards their representation in the Legislatures.

3. Accordingly, in order to remove this obstacle to progress, the Government were very reluctantly compelled to give a decision on these points which was more or less of the nature of an arbitral award. The Government undertook to incorporate the provisions of the award in their proposals to Parliament. This award covered the composition of the Provincial Legislatures and the method of election to them. It was found impossible to isolate the more purely communal questions involved

from such matters as the number of seats for special interests, and the size of the Legislatures. On such points, however, the Government had had the benefit of the advice of the Indian Franchise (Lothian) Committee. The award was issued on the 16th August, 1932, and presented to Parliament as Cmd. 4147.

4. Subject to an alteration in respect of the Depressed Classes explained further below, the provisions of the Award are reproduced on pages 91 and 93 of the White Paper (those regarding election on page 91 being a slightly abridged version).

5. The announcement prefaced to the Award contained the following very important passage:—

Paragraph 4. "His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to the revision of their decision, and will not be prepared to give consideration to any representation aimed at securing the modification of it which is not supported by all the parties affected. But they are most desirous to close no door to an agreed settlement should such happily be forthcoming. If, therefore, before a new Government of India Act has passed into law, they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme, either in respect of any one or more of the Governor's Provinces or in respect of the whole of British India, they will be prepared to recommend to Parliament that that alternative should be substituted for the provisions now outlined."

6. Since the Award there has been one important modification in respect of the representation of the Depressed Classes



the history of which is shortly as follows :—

On the issue of the Award Mr. Gandhi expressed his intention to fast against it in view of his objection to the provisions made regarding representation of the Depressed Classes, which, in his view, would have produced an artificial splitting of the Hindu community. In published correspondence the Prime Minister gave the reasons why the Government were unable to take the same view, but Mr. Gandhi remained unconvinced and began his fast. Negotiations now began, under Mr. Gandhi's auspices, between the representatives of Caste Hindus and representatives of the Depressed Classes led by Dr. Ambedkar. As a result an agreement was reached, now known as the Poona Pact, by which the numbers of the Depressed Class Seats in each province were increased above that recommended by the Communal Award, while a different system of election was substituted. The total number of Hindu seats (known technically as "general" seats) for Caste Hindus and Depressed Classes taken together remained the same under the Poona Pact as under the original Communal Award. The Government accepted the provisions of this Pact in modification of their Communal Award as being a mutually agreed practicable alternative under the provisions of paragraph 4 quoted above, and on this being announced Mr. Gandhi broke off his fast. The White Paper proposals on pages 91 and 93 incorporate the terms of the Poona Pact.

7. The position of the Government, therefore, as regards the proposals of the White Paper which cover the composition of Provincial Legislatures and the method of election thereto\* is that they themselves are specifically pledged not to recommend to Parliament any variation of these proposals except such as may be mutually agreed upon by the communities concerned, and they are also pledged as a Government not to participate in any negotiations for the purpose of reaching such a change. The Government interpret this pledge as covering the provisions of the Poona Pact which they have themselves accepted in the circumstances explained above.

\*This does not cover Franchise.

8. The original Communal Award was concerned only with the Provincial Legislatures owing to the fact that corresponding provisions for the Centre could not very well be settled pending a decision on the numbers to be assigned in the Federal Legislature to British India and British Indian States respectively. The proposals in Appendices I and II of the White Paper, which should be read with paragraph 18 of the Introduction to the White Paper, now contain the Government's proposals on this subject. These proposals are in effect supplementary to the original Communal Award. The Government have, however, not given in respect to them a specific pledge similar to that contained in paragraph 4 of the original announcement quoted above. While, therefore, they are not anxious to see a fresh investigation *de novo* into these proposals for allocation between the communities of seats in the Central Legislature, they do not consider these proposals to stand, as regards their own attitude, in exactly the same position as the Provincial Communal Award, but they see the gravest objection to any change on two points, viz., the allocation of one-third of the British India seats in the Federal Legislature to Muslims, and the percentages of the seats allocated to British India and the States respectively.\*

9. To summarise, it will be clear from the above that the Communal Award has reference only to the composition of the Legislatures, and is not concerned with the whole of the manifold points in the Constitution which have a communal aspect (e.g., special responsibilities of Governors and Governor-General, relations between Centre and Provinces, Fundamental rights, etc.), and also that in respect of the matters provided for in the Communal Award, the Government have clearly defined their position and the conditions upon which alone they would think it justifiable to depart from it.

Sir Austen Chamberlain.

7129. May I try to get clear what is in your mind with regard to the allocation of seats to the Princes?—Yes.

\*To prevent misapprehension, it may be explained that of the ten Governor-General's nominees in the Upper Chamber, it is intended that six should be from British India and four from the States.

7130. I understand you are negotiating with them a scheme on the basis that all the Princes come in?—Yes.

7131. It is a condition of the entry into force of the new Constitution that at least 51 per cent. shall have come in?—Yes.

7132. Assuming what in your opinion is extremely unlikely, as you have told us more than once, that that 51 per cent. and no more come in at the first, you would then propose to take a certain percentage of the seats that were reserved for those who had not come in and use them in some way to increase temporarily the representation of those who have come in?—Yes.

7133. That is your policy, and at the present time the negotiations with the Princes about the complete scheme are not finished and you can add nothing to what is in the White Paper on that subject?—That is so. We have throughout felt that this was essentially a question for the Princes to settle amongst themselves. Indeed, at our former discussions that is the line that the Princes themselves have taken. They have added (at least, one or two of the leaders amongst them have added) that if they cannot settle upon a system of allocation then they will look to us to make a judicial settlement, but there is everything to be gained, if we can achieve the end, by getting a settlement by agreement amongst the Princes themselves, rather than for the British Government or this Committee to have to intervene with a settlement from outside; and I am not at all without hope that we shall reach a settlement of this kind by agreement.

7134. That you will reach a settlement?—That we will reach a settlement.

7135. I think you will recognise, Secretary of State, that the Committee would like to have that settlement before them when considering their Report?—I think that may be so. At the same time I have always taken the view that provided the allocation is a reasonable one (and I think we must assume that it is, because, after all, we want to get in as many States as we can, whatever may be their size) it is not really a matter of primary concern to His Majesty's Government as to what the details are.

7136. If I may say so, I am very much disposed to agree, but it does not lessen my desire to see the scheme before this Committee closes its labours?—I take note of what Sir Austen says.

*Mr. J. C. C. Davidson.*

7137. Is not one of the difficulties in this very complicated matter that the allocation cannot be finally settled until the Princes do know what the size of each of the Chambers is to be and what percentage has been settled for their representation?—Certainly.

7138. Therefore, no final scheme would be available?—Those are two conditions without which it is impossible anyhow to get a final allocation. The Princes must know how many seats they are to have in each of the Chambers.

*Mr. J. C. C. Davidson.*] What I mean is that until our Report is available the actual scheme cannot be finally settled.

*Sir Austen Chamberlain.*

7139. It is rather like building a house: the carpenter waits for the plumber, the plumber waits for the bricklayers, so nothing gets finally finished?—I think Sir Austen will agree that the Princes must know what is to be the size of the Chambers, and what is to be their representation.

7140. I agree. I turn to another subject, Secretary of State. You and I, Secretary of State, have sat for many years in the House of Commons for borough constituencies?—Yes.

7141. Is there any sort of average of population in a federal constituency under your scheme?—I admit there is an enormous disparity, and that is one of the formidable arguments that have been urged against a system of direct election. It is a case of putting the arguments for and against and coming to a decision upon them.

7142. Between what limits would that disparity exist roughly?—Taking a borough constituency here, then we should take an urban constituency in India.

7143. Very well?—Sir Austen will find that it is not so much the numbers that are the difficulty as the geographical size of the constituency. If you take the numbers for the Federal

Assembly you would find that the numbers would not differ materially between the voters in a good many urban constituencies here and the voters for the Federal Legislature. The trouble comes in with the geographical size of the constituencies.

*Sir Austen Chamberlain.*] I agree.

*Major Cadogan.*

7144. And lack of communications ?—  
Yes, to add to the difficulty.

*Sir Austen Chamberlain.*

7145. You and I, as I say, Secretary of State, represent closely-inhabited borough constituencies. I suppose you can walk across your constituency from side to side and end to end of it in an hour ?—Yes ; I should think even in half-an-hour.

7146. I thought you could, but I did not quite dare to press you to that pace. In an English county constituency evidently the communications are much longer but they are manageable by an individual, are they not ?—Yes.

7147. How do you imagine that an Indian candidate, with a constituency with an area of 17,000 square miles, will get into touch with the electorate ? I take 17,000 as having been the size given for some of the areas in the Punjab ?—I think it is going to be extraordinarily difficult.

7148. Would it be going too far to say that it would be quite impossible ?—I think myself it would be quite impossible for a member in a constituency of that size to have the same kind of personal contact that the member for an agricultural constituency in England has with his constituents. I think one must frankly admit the fact that it would mean very little contact at all between the member and a great many of his constituents.

7149. In fact, would it be too much to say that he would be really as remote from a great number of constituents as if he were elected at second hand by an indirect system of election ?—I should rather like to hear Sir John Kerr's view upon a question of that kind, but before I ask him to give a more detailed answer I would remind Sir Austen that many of these constituencies in India are

of a very great extent, and already, in the nature of things, there is much less close contact between the member and his constituents than there is here. Would you amplify that, Sir John ?—(*Sir John Kerr.*) I would say, Sir, that the system is, as Sir Austen Chamberlain has remarked, entirely different in India from anything we can conceive of in this country. Of course, we have these members already for the Central Legislature in India, and the present constituencies are very much larger than any constituency will be under the White Paper scheme, because the number of elected seats is very much smaller. The way that they maintain contact at present is by going to the headquarters of subdivisions or big market towns, police stations, and places of that kind, and having a talk with their main supporters in that locality. There is nothing, or very little, in the way of the ordinary public meeting that takes place in England, and that system, I imagine, will be continued the more responsibility becomes developed in India.

*Marquess of Zetland.*

7150. May I interpose one question there ? I do not quite understand if the argument of the Secretary of State and Sir John Kerr is this : That because a bad system exists now in India, therefore, it is necessary that it should be perpetuated ?—(*Sir Samuel Hoare.*) That of course, is making a comment upon what I have said, and Lord Zetland can make what comment he likes, but let him face not only the question of these anomalies, but let him face the full issue. I admit all these anomalies. I have made, as my colleagues amongst the Indian Delegates will remember, very much the same kind of speech at the Round Table Conferences that Sir Austen Chamberlain has been making now.

*Sir Austen Chamberlain.*

7151. Have I been making a speech ?—Perhaps I should say that I have expressed very much the same views that Sir Austen is suggesting in the questions that he has just asked me. The difficulty is to find an alternative, and so far we have found very grave obstacles in the way of alternatives.

7152. Let me try to understand how the proposed system will work before I come to the alternatives. I gather from Sir John Kerr that in fact the present practice is and the future practice must be that the contact of the Member with the mass of his constituents must be indirect, that he meets only a few of his leading supporters and he leaves to them the instruction and education and persuasion of the mass of the voters?—(Sir *John Kerr*.) I would say he meets a large number of his supporters—not only a few of his leading supporters—nothing like the whole thing. I do not say he has any public meetings attended by a large proportion of the constituents who live in that locality.

7153. Public meetings are only a part of the machinery here. A very large part of the influence which a candidate obtains is probably obtained by personal visits to his electors at their homes. There would be nothing of that kind?—Visits to their houses would not be practicable, except in the case of a few, but they would if they were urgently interested in a matter like tariffs, which a lot of them are at present, I know, come and arrange to see their Member somewhere, and urge their views upon him.

7154. If they had a sufficiently strong view upon a subject, they would seek their Member out?—Yes.

7155. But if they were indifferent, even though great issues were at stake, the candidate would have very great difficulty in reaching them?—Considerable difficulty, yes.

7156. Have you made any calculation of what the cost of an election to the candidate will be in one of the great constituencies?—In the same Appendix in the Franchise Committee's Report, there is an estimate of the cost to the candidate. We made inquiries about this, wherever we went, and, of course, the figures are very rough. It is not necessary in India at present and there is no maximum as there is in this country on the expenditure of a candidate, and, consequently, the returns are not altogether trustworthy; but from such information as we could get, we take it that the cost of a general election to parties and candidates will be about 1 crore, or £750,000.

7157. I want to get at the expenses of an individual candidate. The case I put is that an issue has arisen on which a candidate desires at the General Election to take the opinion of the electors: He comes into the field a new man; before he can do that, he has got to say: "Can I afford the cost of standing"? What will the cost be to him?—The cost varies enormously. Sir Malcolm Hailey has just told me that in his Province the cost varies from 8 annas to 35,000 rupees. (Sir *Malcolm Hailey*.) 8 annas is the lowest I have ever heard of. That was a Congress candidate. Thirty-five thousand rupees is the largest sum any of my friends have told me they have spent on an election, and I believe in other Provinces it has gone up to very much more.

[Sir *Tej Bahadur Sapru*.] In my own Province I have known in my professional capacity men spending something like 50,000 to 60,000 rupees, but that is only in a few cases—just two or three cases, I remember.

Sir *Austen Chamberlain*.

7158. Unless the candidate is so popular that his election makes itself the expense will be prohibitive to any but a rich man?—(Sir *John Kerr*.) I would not put it so categorically as that. I think in a great many cases there is very little interest taken at present in the elections to the Federal Council. In the Backward Provinces in which I have served it is often very difficult to get a man to go to the Central Legislature at all; they are much more interested in Provincial affairs than in the sort of things that are discussed in the Central Legislature, and that accounts for the present fairly general lack of interest in the Federal elections. If in the future the Federal Legislature has to deal with matters which touch the rural population more closely, then I anticipate that there will be more interest taken in the elections, and the cost to the candidates and the parties will, presumably, go up.

7159. Is there any Corrupt Practices Act in India?—Yes.

7160. But no maximum to the expenditure?—No maximum has yet been prescribed. The Government has power to prescribe a maximum, but it has never

felt itself in a position to lay down what that maximum ought to be.

7161. My difficulty, Secretary of State, if I may put my point to you now, is to see how a system of the kind described, and in the conditions described, can be really considered to be in any way representative. Can you say anything to relieve my anxiety on that score. A candidate bound to envisage a very large expense if there is a hotly contested election; a candidate unable by reason of the size of the constituency to get into touch with the electors whom he hopes to influence; and a voter voting for a man whom he does not know, a name or a ticket. That is the picture as I see it painted by you and Sir John Kerr. Have you anything to say upon that?—(Sir Samuel Hoare.) Taking Sir Austen's last point first, the point that he made about the voter not knowing for whom he was voting. I do not know whether he had in mind the illiterate voter in that case.

7162. I mean any of the voters whom the candidate cannot reach, and who are dependent upon second-hand information about him?—Yes; there are, of course, as Sir Austen knows (I do not want to press this point unfairly) with the big constituencies here, cases in which there is much less contact with the Member than there used to be. To take my own case, with a very small compact constituency, there must be a great many of my constituents who have never had any personal contact with me. But I agree, the kind of conditions that we have assumed for a representative system of this kind, in many directions do not apply with these enormously great constituencies. But, Sir Austen will remember that that is so now. The difference that our proposals make is a difference of degree; it is not a proposal for a new system; and for better or worse, a system of representative government has been in existence in India now for many years, in which there can be very little of the personal contact between the Member and his constituents that we have here.

Marquess of Lothian.] My Lord Chairman, I do not know whether I should be out of order, but we have in this Room a considerable number of gentlemen who have actually had electoral experience under these conditions to-day, and would it be possible at some time

that they should state to the Committee how they actually operate these large constituencies and what their view is of their contact with their constituents?

Sir Austen Chamberlain.] At the moment, I am supposed to be examining the Secretary of State, and I cannot examine the Delegates. They will, no doubt, find their own way of putting their view.

Mr. Rangaswami Iyenger.] I am going to tell my experience as a man who has canvassed 10,000 square miles.

Sardar Buta Singh.] And it is the same in my experience. We have got the greatest possible contact with every constituency in the Punjab.

Witness.] Sir John Kerr wishes to add a word to my last answer. (Sir John Kerr.) With reference to one point that was mentioned by Sir Austen Chamberlain, these 7,000,000 people who it is proposed should constitute the electors under the White Paper scheme, have already taken part in four General Elections for the Provincial Councils. They have already a considerable knowledge of public affairs, and a still greater knowledge of the public men who will be appealing for their support at future elections. It will not be a case (I am talking now only about the Federal elections) of people voting for candidates of whom they have never heard, and on issues which they do not know anything about.

Sir Austen Chamberlain.

7163. But a great part of the issues which Sir John Kerr has spoken of as being those which interest the electors most, will have been transferred under this scheme to the Provincial Assembly. The issues which will remain to the Federal Assembly will be, in the main, issues of high policy, far more remote from the daily experience of the electors, and the electors, therefore, will need a measure of instruction and guidance to be obtained by the discussion of these questions by the different candidates, far greater than they will require for the settlement of their local affairs, and, yet by reason of the size of the constituencies, that kind of education and information will be almost impossible, or so it seems to me?—The point I wished to make was

that the 7,000,000 electors will know something about the people who are appealing for their support ; they will not be voting for entirely unknown men.

7164. The Lothian Committee observes that the Federal Legislature will deal with the major aspects of commercial, industrial and financial policy. How is the political education of this great mass of voters to be conducted ?—(Sir *Samuel Hoare*.) I suppose the Press would play a fairly large part.

7165. I suppose our safeguard in this country in regard to the Press is that if one of us is abused in one paper, one is probably defended in another ; but can you count upon the same diversity of judgment in the Press of India ?—We have got a good many representative Indian gentlemen here, some of them connected with the Press ; I do not know what their answer would be to that question. What would Mr. *Iyenger* say to that ?

Mr. *Rangaswami Iyenger*.] I certainly think that our Press will deal with questions connected with the large issues that arise in regard to the Federal Legislature in a manner more becoming and in a much more sober way than the kind of thing that I have found in certain journals of this country.

*Sir Austen Chamberlain*.

7166. Secretary of State, I will not press you any further. I will not press any further the difficulties which I feel in regard to the system of election to the Lower Chamber of the Federal Assembly in the White Paper. My purpose in putting the questions to you was to give you an opportunity of answering my doubts. But I pass to an observation of yours that we must consider the difficulty of the alternatives. The first alternative that would occur to one would be election to the Lower House of the Federal Assembly by the Provincial Legislatures. What are the obstacles to the adoption of that plan ?—You would then have the Provincial Councils electing for both Federal Chambers. Would you make any distinction between their voting ?

7167. May I pass over that objection for a moment, which would be met if the method of election to the Upper House or Council of State was altered.

Is there any inherent obstacle, apart from that, to having the Provincial Legislatures elect the Lower House of the Federal Assembly ?—No, I should not say that there is any inherent obstacle to a system of election of that kind. After all, we are proposing it as the method of election for the Upper House of the Federal Legislature.

7168. For these major issues upon which the Lothian Committee reports, do you not think you would get more suitable men from election by an informed Assembly, like the Provincial Assembly, rather than from so vast an electorate, so widely scattered as that provided in the White Paper scheme ?—I do not think my mind is sufficiently sure to enable me to give an answer to a question of that kind. It is so much a matter of surmise.

*Lord Eustace Percy*.

7169. I was wondering whether you could put that question in a somewhat different form, Sir *Austen*, if it would not be inconvenient to the Secretary of State ? May I ask the Secretary of State what are the practical objections to having no direct election to either of the Federal Chambers ?—The practical objections, I think, are two-fold. I think, first of all, there is the objection that I do not think anybody can ignore that political public opinion in India has got used to a system of direct election and, so far as I can gather, is very strongly against the substitution of indirect election for direct election. That is the first objection that we had in our minds. The second objection is of a different character. It is our difficulty in finding a suitable alternative. We have felt that there were objections against the Provincial Councils electing both Federal Chambers from the same electoral background. Next, when we came to the other alternatives, many of us were very much attracted to various systems of group voting in the constituencies. Sir *John Kerr* will be able to tell you that Lord *Lothian's* Committee went very carefully, and I believe also very sympathetically, into these proposals for group voting, and they did come to the conclusion, for reasons that Sir *John Kerr* and Lord *Lothian* can give you, that these group systems would not work. My answer, therefore, to Sir *Austen* and to

Lord Eustace Percy, is that the objections are, first of all, the objection of public opinion in British India, and, secondly, the fact that so far we have not been able to find a practicable alternative.

Sir Austen Chamberlain.] I recognise the force of the objection about public opinion. I do not think it is wholly conclusive because it is based on a past which is very different from the future which is contemplated by the White Paper.

Major Cadogan.] Might I add, you concede the principle of direct election. It is not as if we were denying the principle of direct election to India. They have got it in the Provinces. Is not that so ?

Sir Austen Chamberlain.

7170. I now want to turn to the Council of State. One of your objections to the election of the Lower House by the Provincial Assemblies is that already under your scheme they are the Electoral College for the Upper House ?—Yes.

7171. Your Upper House will consist of two classes, apart from the nominated men : of men who owe their seats to election, and of men who owe their seats to nomination by the Princes ?—Yes, and so, of course, will the Lower House.

7172. Have you ever considered whether the Upper House might not well be composed of representatives, not of Legislatures but of Government ; in other words, that the British-India representation in the Upper House should be put on what is *mutatis mutandis* the same footing as the States representation ?—Not only have we considered a proposal of that kind, but, as my Indian friends will remember, I myself have been at various times greatly attracted by it. There again my difficulty has been the difficulty of public opinion and the fact that (I quite admit, as Sir Austen Chamberlain has just said) in different conditions India has got used to a different kind of system.

7173. May I ask you whether, if you could persuade Indian opinion, you would not still favour the composition of an Upper House on that basis ?—Yes, I still hold the view that I have often expressed, during the last two years, that I think there is a great deal to be said

for a Federal Legislature constituted upon that kind of basis. My trouble has been that I have found very few people to support me.

7174. Would you agree with me that one argument in favour of that scheme would be that it would help to defeat centrifugal forces in India, and tend to bind the Federation more closely together ?—Yes, and that is one of the arguments that I have ventured myself to use in the past.

Sir Austen Chamberlain.] I should like to have all the other arguments, but I will not press you for them now.

Lord Irwin.

7175. Might I ask one question of Sir John Kerr, or the Secretary of State. On the question to which Sir Austen addressed his earlier inquiries, as between direct and indirect election, what importance, if any, would the Secretary of State or Sir John Kerr attach to an argument that is frequently used that if you have indirect election it would be likely to tend to have the effect of dividing Provincial Councils rather on the lines of All-India issues, and would therefore militate against what ought to be, I suppose, the desire of all who wish to see the thing work, namely, the free growth of political parties in the Provinces suited to the different conditions in the several Provinces ; that you would rather tend to get the All-India atmosphere into the Provincial Councils rather than its own atmosphere dividing on its own interests ?—I am inclined to think that an argument of that kind is rather double edged. After all, you may All-Indianise the Provincial Councils, but you may equally provincialise the All-India Centre. Seeing both those possibilities I do not think I myself could express a very definite view one way or the other.

Sir Austen Chamberlain.

7176. Of course, the objection, whatever it is, applies to the method of election proposed for the Council of State ?—Yes.

Mr. Butler.

7177. May I ask Sir John Kerr a question ? With reference to the new polling

methods proposed by the Franchise Committee do not you consider that these will materially help to poll the extra numbers proposed?—(Sir John Kerr.) Certainly. Most Local Governments assented to the practicability of our scheme, because they realised that this simplified polling method would very greatly facilitate the carrying out of the elections.

7178. Is it not true to say that this method is an improvement upon methods which have prevailed hitherto?—It is an improvement in every respect, I think, and it is generally admitted to be so both in the matter of secrecy and in the matter of getting the votes recorded accurately.

7179. Would it not be true to say when you were Vice-Chairman of the Franchise Committee you saw this method in operation and found it to be very successful?—Yes; I have seen it not only as Deputy-Chairman of the Franchise Committee, but also previously in municipal elections.

7180. Would it not also be true to say that on your recent tour in India, besides your previous experience, you had the advantage of hearing the evidence of District Officers who had themselves worked the scheme?—Yes.

7181. And that those District Officers considered that this scheme would work?—Yes. It was one of the few things that people were practically unanimous about—the certain success of this coloured box system of polling.

*Lord Hardinge of Penhurst.*

7182. I am going to ask the Secretary of State, if he will allow me, a question of principle. In England we have had for many generations a system of property qualifications. Little by little these property qualifications have been reduced until we have now shed them altogether. Why then introduce into India a system we have abandoned for ourselves?—(Sir Samuel Hoare.) I think for two reasons: Politically I should be against a great revolutionary change like the introduction of adult suffrage suddenly into India. Administratively I do not think it would work.

7183. Has that been seriously considered?—Yes. In our discussions we have several times had proposals for adult suffrage urged by one or other

member of the Round Table Conferences, and, indeed, Lord Lothian's Committee went into the question, and they came to the view that, quite apart from political merits, you simply could not work a system of that kind in the present conditions.

7184. Could that not be worked by indirect elections where a voter would represent 20 adults, say, because then it appears to me that everybody would have a chance of voting?—That is just the kind of alternative to which I was alluding in an answer to Sir Austen Chamberlain. We considered a number of these alternatives, and the Lothian Committee considered them in greater detail, and we have not been able to find a practical alternative; that is the trouble. I would like Sir John Kerr or the Marquess of Lothian to amplify what I have said upon the practicability of any of these alternatives. Would you say a word, Sir John Kerr, about the punchayets? (Sir John Kerr.) Originally three Local Governments were more or less in favour of trying an indirect system of election by groups in the villages. The first place we went to was Lucknow where Sir Malcolm Hailey discussed the matter with us at considerable length, and he put one of his officers, who had made a considerable study of the subject on to work out the scheme. We left Lucknow in great hopes that a scheme would be evolved which we could recommend. I may say that I personally, before I went to India, was very strongly in favour of this group system of election. Then we went to Bihar, and in Bihar, owing to various administrative difficulties in working an enlarged electorate on the direct system, the Local Government, or the majority of them, were keen on some form of indirect election. Then we got to Bengal, and we found the local Provincial Committee desirous of sweeping away all direct voting and substituting an indirect system in its place. They had not thought it out very much, but that was their feeling at the time. After that, all the other Provinces we came across were unanimously opposed to any form of indirect election. They had thought the subject out well, and their practical difficulties seemed to us extremely strong. Perhaps I might mention briefly what they were. First of all, there are the administrative difficulties of splitting up villages into groups.



I will stick to the case of villages at present because in towns the difficulties are entirely otherwise, but the towns only account for about 5 per cent. of the total electorate that matters. In the village you have either to form your groups according to caste, or not according to caste. If you form them on a caste basis you do go a considerable way towards perpetuating the caste system in public affairs, and the large majority of Indian public men feel strongly that that would be a fatal mistake. Then, if you discard the caste basis, you have got to go on some sort of geographical basis. You have to take the people living in a particular laue, or in a particular hamlet, or something of that kind, and we found on local enquiry in a considerable number of villages that these people really have no community of interest which enables them to join together and elect a mukhi or mouthpiece, as they call it. You cannot get 20 men, or 10 men of the upper castes and 10 men of the lower castes to unite on the person who shall represent them at the election. Then we were told, before we made our enquiries, that we were to assume that the communal distribution of seats was to continue—the Hindu, Muhammadan, and other smaller communities were to receive separate representation. We found there that there were very considerable difficulties in forming communal groups. Especially in Upper India in the non-Muhammadan Provinces, you will very likely find in a village perhaps only half a dozen or a dozen Muhammadans. All the rest are Hindus. Those Muhammadans are not sufficiently numerous to form into a group. If you join them on to the Muhammadans in some other village there again you run up against the difficulty of community of interest. The members of the group may not know one another by sight, and it seemed to be absolutely hopeless to form any groups at all. These were the main practical difficulties of the group system which led the majority of Local Governments in India to oppose it from the outset. When we got back to Lucknow we found that Sir Malcolm Hailey's Government had come to very much the same conclusion as the other Local Governments. They had been trying experiments with this group system, and they had found that it broke down, or, at any rate, did not

work very successfully owing to the difficulties that I have mentioned. One trouble, quite apart from the difficulty of forming groups, that we found was the introduction of party feelings (political feelings) in the villages which would have made the group elections very difficult to work. If the group system is going to be to any considerable administrative advantage, it has got to be easily worked in a friendly spirit. The majority of the groups have got to meet together and find out, without difficulty, somebody who will act as their mouth-piece. Nowadays Indian villages are in many cases so torn by internal factions, or perhaps by agrarian questions, questions of landlord and tenant, and the like that the group elections would inevitably have become highly contested. It would not have been possible to carry them out on a simple system. You would have had to have a register of voters, you would have had to have arrangements for voting by ballot, for counting the votes, and all the rest of it. The elections carried out on that system would almost certainly arouse a great deal of feeling. There would be appeals against the result of the elections, and somebody else would have to go back to the village and hold a fresh election, and all that kind of thing. We found official opinion in India for that reason almost unanimous that adult suffrage from the administrative point of view would be preferable to the group system; I mean, looking at it purely from the point of view of the amount of work and worry that it would entail. Then apart from that, we found that Indian public opinion, as I say, temporarily in Bengal, was unanimously opposed to elections being carried out on any system of that kind. Indian public opinion looks back to the old days of the Minto-Morley constitution, when this indirect election was the main way of choosing members of the Legislature through local bodies. The local bodies, District Boards and Local Boards and municipalities used to select Delegates, and those Delegates went to Headquarters and chose a Member for the Legislature. The amount of friction and intrigue to which that system gave rise is almost incredible except to those who like myself have worked a system of that kind. It all boiled down to this, that the Delegates

were instructed to vote for Mr. A. They voted for Mr. B., and when they came back very unpleasant stories were put about for the reason of their change of view. It was felt for those reasons that the group system in the villages of India would not form a sound basis for the election; that the secondary elections would have to be by ballot, and it would be impossible for the group electors to make certain that their mouthpiece had voted in the way that he was expected to do. For that reason, Indian public opinion was in the end almost unanimously against any sort of group system. We felt as a Committee that these were very definite disadvantages and drawbacks and that even if those disadvantages and drawbacks were not as strong as they seemed to us, it would be impossible to force a system of this kind on a country where practically nobody, either official or non-official, was in favour of it. Those were the reasons, my Lord Chairman, why the Committee decided not to recommend the group system for adoption.

*Lord Hardinge of Penhurst.*

7185. Thank you very much. I am very much obliged to the Secretary of State and to Sir John Kerr for the full explanations they have given of the objections to the group system. I would just like to ask one more question. There are now 7,000,000 voters, and I understand the Lothian Report proposes to raise this figure to 36,000,000. Of those 36,000,000 how many will be women?—(Sir John Kerr.) About 6,000,000.

7186. There are 63,000,000 women of adult age in India, are there not? Is that not a very small number—6,000,000 out of 63,000,000?—About 10 per cent. adult women.

7187. Is that based on literacy?—No; there are various qualifications for the women proposed in the White Paper; the first is that all women who have the property qualification in their own right shall be entitled to the vote, and we estimate that about 2,000,000 women will get it in that way. Then it is proposed that women who are the wives of voters for the present Provincial Councils should also have the vote. We estimate that they will come to about 4,000,000. Then it is proposed that the women who hold the educational qualification prescribed for men should also have the

vote, and in that way we get up to a total of something about 6,000,000.

7188. Do you think the women of India will be satisfied with only 6,000,000 votes?—I think the women in India who are capable of taking a part in public affairs will press for something more. But, of course, the illiterate women, and so on, will not feel at all strongly, one way or the other.

*Lord Hardinge of Penhurst.]* As long as we do not have an agitation in India, such as we had in this country 20 or 30 years ago, the Suffragette movement, that is satisfactory.

*Earl of Derby.*

7189. I should only like to ask Sir John one question. He has given very good reasons why there should be direct voting in India. In answer to a question he said that the present system worked well. He thought that with the increased electorate it would still work well. When asked another question: Suppose there was a manhood suffrage, would the present system work? his answer was: Not directly, not if it was put in force immediately. I think I am correct in that?—I said, I think, that it would be impracticable to adopt adult suffrage immediately.

7190. But I want to know: Eventually, do you think it will be possible, if there was manhood suffrage, for the present system still to work, to cover that manhood suffrage?—I could not say. It will be a great many years, I think, before manhood suffrage comes into view in India, and what the conditions will be then, I should not like to say.

7191. You say, it would work up to, roughly, 20 per cent. of the population?—That is what the Committee said. The Committee said that it would be impracticable to provide for more than 20 per cent.

7192. Therefore, after 20 per cent., another system would have to be adopted?—If it was going to be adopted at the present time, that is so.

7193. But do you think, if it came gradually, the present system might be elastic enough to cover more than the 20 per cent.?—It is very hard to say. It will not come for another generation, in my opinion.

Lord *Hutchison of Montrose*.

7194. With regard to the distances that individuals will have to go to the polling station, what is the average distance in a widely dispersed or thinly-populated area—what is the average distance of a polling station from the villages?—Between five and seven miles, not right out in the jungle, where there is no population at all, but in the ordinary cultivated area.

7195. So from the point of view of the practicability of recording the vote, they would not have an undue distance to go?—No, not at all.

7196. Then as regards election expenses, would the Governor-General have power to make rules and regulations as to the amount to be spent by a particular candidate?—(Sir *Samuel Hoare*.) He has at present. We are not contemplating that the Governor-General under the Federal Government would make a decision of this kind; we think it is essentially a matter for the Federal Government itself.

7197. In other words, to the Assembly itself?—To the Federal Government and the Federal Legislature.

7198. At the present moment, the Governor-General-in-Council has powers to make rules?—Yes. (Sir *John Kerr*.) And the Governor-in-Council in the Provinces.

7199. In relation to the representation of the Princes in the Upper House, would it be within their competence to change a representative inside the life of a Legislature?—(Sir *Samuel Hoare*.) I have never been able to see how you could prescribe in an Act of Parliament that they should not do so. I hope they will not do so, and I believe myself that if they accede to the Federation, they are most unlikely to do so. I do not see, however, how you can deal with it by a section in an Act of Parliament. After all, if you put a section into an Act of Parliament, it would be very easy for a Prince to get round it, if he so wished. For instance, he could insist upon his representative resigning, and there would be plenty of ways of getting round it. That all makes me think that it is better not to attempt to put anything into an Act of Parliament. That does not mean that we should wish or expect Princes to withdraw their representa-

tives. We do not; we hope their representatives will remain there during the lifetime of the Legislature, but we do not feel that we can make any prescription in an Act of Parliament against it.

Mr. *M. M. Joshi*.

7200. May I ask a supplementary question on this? Is it not possible to put something in the Treaty of Accession as regards the change of representatives of the States?—I see grave difficulties in the way of putting it either into a treaty or into an Act of Parliament.

Mr. *Cocks*.

7201. You know, of course, that the Lothian Committee states or expresses the opinion that if a system of responsible Government is to work satisfactorily, it will only be because the people feel that the Legislatures represent them. Are you aware that the Indian Trade Union Federation passed a Resolution stating that under this scheme there is no prospect of the Indian masses and the working classes ever securing an adequate and effective voice in the control in the Legislatures and administration of the country?—I take it from Mr. Cocks that such a Resolution has been passed.

7202. But are you further aware that they have given evidence now before the Sub-Committee that when they said that, they were not at all referring to safeguards but were referring to the franchise and composition of the Chamber, and it would still stand as their opinion if all the safeguards were swept away?—I take it that that is their opinion; it is not mine.

7203. We have been told that adult suffrage is impracticable for administrative reasons. Could you state what the objections are to the proposal that adult suffrage might be brought in in the cities with a population of 100,000 and over to start with?—I should not see any justification for making a distinction between urban and rural constituencies. We make no such distinction here.

Major *Attlee*.

7204. May I interpose a question here? You said we did not do it, but in the past, as a matter of fact, the urban labourers and the rural labourers were

enfranchised at different times ?—That is perfectly true, but I should be opposed to a provision that gave an advantage to an urban voter and did not give it to the rural voter. One of the main objects of our franchise proposals is to make an attempt to readjust the balance between rural and urban India. Rightly, or wrongly, we feel that the scales at present are over-weighted in favour of urban areas. One of the best aspects of our proposals is that we do attempt to readjust that balance.

Mr. Cocks.

7205. The suggestion is not that they should have more seats in the towns than in the country, but that the electorate should be extended in the towns ?—I should have thought there were grave objections to that. One that occurs to me, upon the spur of the moment, is the inter-change of population between rural and industrial India. I am informed that there are great migrations of rural labour into the towns, and vice versa. That would seem to me at once to raise a very grave practicable objection to the kind of proposal which Mr. Cocks has made.

7206. The Round Table Conference, the Franchise Committee, in considering the question of property qualification, suggested that that qualification should be used in its widest terms and include not merely ownership of property, but receipt of wages. A suggestion has been made that there should be a wage earning qualification. Have you anything to say upon that point ?—I am going to ask Sir John Kerr to deal with this question of detail. (Sir John Kerr.) The Franchise Committee went into that question of making wages a basis of the Franchise, and they found that there were very great difficulties in the way.

Sir Tej Bahadur Sapru.

7207. What page ?—Page 41, paragraph 85. The basis of any wage census in India must be the agricultural wage, and the agricultural wage is, more often than not, paid in kind rather than in money. It would be practicably impossible to take a wage of that kind as the basis of a franchise system. There are variations in prices ; variations in the nature of the produce that the labourer

receives at different seasons of the year, and all sorts of complications of that kind. You would have to have an enormous staff, and there would be an enormous number of appeals and objections to any electoral system based upon matters of that kind. Of course, in the towns, where you have industrial labour paid in cash, the difficulties would be less serious, but even there, the vast majority of employers do not keep books or registers which would form a sound basis for working the system. It was for those reasons that the Franchise Committee decided not to recommend the adoption of wages as the basis for the Franchise.

7208. You are aware that Major Milner, a Member of the Commission, in a Note at the end, said that he considered the difficulties in the way of the wage earning qualification had been over-stated by the majority of the Commission ?—Yes. I have had many arguments with Major Milner about it, and I am very sorry I was not able to convince him that he was wrong.

7209. I am informed that it is the opinion of organised Labour in India that under this proposed system it will be absolutely impossible for a single Labour Member to be elected a Member of the Federal Council of State. If that is so, do you think that should not be remedied in some way ?—(Sir Samuel Hoare.) We do not propose that there should be the special representation of interests in the Council of State. I am not quite clear whether that is the point which Mr. Cocks is dealing with, or whether it is a different point.

Mr. Cocks.] There are two points. First of all, there is the property qualification for the Membership of the Council of State, which it is suggested would bar out any representative of Labour. Secondly, there are special seats reserved for Europeans and Indian Christians by means of special electoral colleges. Could not the same thing be done for Trade Unions ?

Mr. Zafrulla Khan.] My Lord Chairman, Mr. Cocks is no doubt aware that membership of a local Legislature itself will be one of the qualifications, but there will be a large group of the Depressed Class representatives in the local Legislatures, certainly drawn from the

Labouring classes : that each of them will be eligible for election to the Upper House on account of being a Member of the local Legislatures and most of them would be able to form a group to elect a representative from among themselves, if they so choose, to the Upper House. I hope he has that in mind, and is putting that question, subject to these considerations being there already.

*Mr. Cocks.*

7210. I agree with that, but the White Paper suggests a property qualification, and does not say what a property qualification should be, but if it is a high one they would be barred then?—We were assuming that Labour representatives would be elected in the kind of way suggested by Mr. Zafrulla Khan.

7211. Seeing that the Round Table Conference says there was general agreement that adult suffrage was a goal which would ultimately be attained, is there any objection to inserting in the new Constitution a provision for the periodical revision of the electorate in that way in a period of time?—I would have thought the wiser course was for us to insert in the Constitution Act a definite period during which no franchise alterations could take place at all. I think that is necessary in the interests of stability. I think after that period those questions are essentially questions for the Federal Government and for the Federal Legislature, and I would rather leave the subsequent period in their hands.

*Sir Tej Bahadur Sapru.*

7212. After the expiry of that period which you have in view, will you allow the Federal Government and the Federal Legislature to amend the franchise, to increase it or to broaden it?—That was the intention of my answer.

*Marquess of Salisbury.*

7213. Secretary of State, do I understand that the franchise as fixed in the Act will be alterable by the Federal Legislature without the consent of Parliament?—Not under the White Paper provisions, but I have always assumed that there must come a period when the Federal Legislature can make amendments. When that period should be is

a matter of discussion, but I think, looking to the future, there must come a period when the Federal Government, and when the Federal Legislature, should be free to decide upon amendments.

7214. Then that would be after another Act of Parliament, you mean?—No, because in this Act of Parliament we would say: "For X number of years there can be no alteration of the franchise." I am assuming that after X number of years the Federal Legislature should be able to deal with the question.

7215. That is a most important admission of the Secretary of State, because that means that a very important part of the basis of this Constitution is to be alterable without the consent of Parliament?—I think it is a matter for further discussion, in a matter like the franchise which, in my view, is very much a matter of Indian internal politics, whether after a period, whatever that period may be, there ought not to be some latitude left with the Federal Government and the Federal Legislature to make alterations.

*Mr. Zafrulla Khan.*

7216. So far as Federal franchise is concerned?—So far as Federal franchise is concerned.

*Lord Eustace Percy.*

7217. Have you made up your mind that that power, if it is given, should rest with the Federal and not with the Provincial Legislatures? I am thinking of the American precedent by which the franchise for the Federal Legislature is fixed by the States, and not by the Federation?—I think it is a matter of discussion. My only suggestion to the Committee is that there must come a period when the Legislatures in India must, or anyhow should in my view, leave a latitude given to them to make alterations.

*Mr. Zafrulla Khan.*

7218. May one assume that so far as Provincial franchise is concerned, that is to say, franchise qualifying people to become voters for elections to the Provincial Assemblies, when that period comes which you have in view the matter

will be left in the hands of the Provinces themselves if some such scheme is evolved?—I should think that is inevitable.

*Marquess of Salisbury.*

7219. The Secretary of State is aware that under paragraph 110 it is said to be outside the competence of the Federal and Provincial Legislature to make any law affecting the Constitution Act "except, in the case of the last mentioned Act, in so far as that Act itself provides otherwise." So, I suppose, there will be a special provision: The Secretary of State contemplates that this matter will be exempted?—There would certainly have to be a special provision (supposing it was agreed to have a provision of this kind) that these proposals would remain intact for X number of years. After X number of years provision would be made on certain lines for powers of amendment whether by the Federal Government, or whether by the Provincial Governments.

*Sir Austen Chamberlain.*

7220. Does that apply to franchise only or to the division of seats among various communities?—In the communal decision we do make provision.

*Sir Tej Bahadur Sapru.*] Ten years.

*Mr. Zafrulla Khan.*

7221. There was a possibility of change after ten years by His Majesty's Government?—This is the provision in the communal decision: "Provision will be made in the Constitution itself to empower a revision of those Federal arrangements and the other similar arrangements mentioned below after 10 years with the assent of the communities affected for the ascertainment of which suitable means will be devised."

*Sir Austen Chamberlain.*

7222. It is to be done only with the assent of the communities affected?—Yes; otherwise Sir Austen is right in saying that my suggestion refers only to the franchise.

*Sir N. N. Sircar.*

7223. I was going to ask the Secretary of State, if he will permit me: As

the communal decision stands it means this: Assuming, for the sake of argument, one Party has got more than it ought to have it must assent to that being given away before there can be any change at any time. You have got to get the assent of somebody who has got more than they ought to have?—If Sir N. Sircar makes that hypothesis it is so.

*Sir Tej Bahadur Sapru.*

7224. Pursuing this very line of thought which you have been pursuing just now, is it your intention that you will in the Constitution Act indicate the nature of the subjects which may be modified or amended after a certain time by the Indian Legislature?—Sir Tej raises the very big and important issue of constituent powers.

7225. Constituent powers?—That is a question which we must consider in detail.

7226. May I remind you that this question was raised at the time of the third Round Table Conference?—Yes.

7227. And also I raised it at the time of the second Round Table Conference, and the Indian view was that you must indicate in the Constitution Act itself the limits within which the Indian Legislature may go in amending the Constitution, and the conditions under which it may do so?—The trouble, of course, has been that so far we have found very little agreement upon the question. Sir Tej will remember that we have discussed this question, and my memory of it goes to show that there was very little agreement upon it.

*Sir Tej Bahadur Sapru.*] It was not discussed at great length; only one morning, and very casually.

*Marquess of Salisbury.*] Will Sir Tej tell me what the point is? I heard the Secretary of State's answer.

*Sir Tej Bahadur Sapru.*

7228. The point is that there must be some subjects which must be left for amendment to the Indian Legislature after a certain period of time, and the conditions under which those amendments might be made should be incorporated in the Constitution Act itself. It is a question of policy. We suggest there may be

classification of subjects which might be left to the discretion of the Indian Legislature for amendment laying down the conditions under which those amendments may be made. There are similar provisions to be found in other Constitutions. The South African Act provided that, so far as native affairs were concerned, they were not to be touched for ten years, and things of that kind. I am following that analogy. I am requesting Sir Samuel to consider this question, and see whether he can give us a list of subjects which he is prepared to recommend for amendment under certain conditions by the Indian Legislature?—We have considered the question at some length. If Members of the Committee and the Delegation would look at page 64 of the Report of the Third Session of the Conference, they will find a Memorandum on this subject. We really have got very little further than the position in that Memorandum. Our difficulty has been that when we have come to consider the kind of question to which these amending powers might be applied, we have found considerable disagreement amongst sections of Indian opinion itself.

*Lord Rankeillour.*

7229. Might I ask whether what the Secretary of State has said about possible amending power would apply to Appendix I of the White Paper, "Composition of and method of election to the British Indian side of the Federal Council of State"?—That is one of the questions, as I have said earlier this morning, that we have had in mind. It is a matter for discussion, whether within the powers of the Constitution Act some kind of power of amendment should not be given after a period of years.

7230. That will not apply to any conditions of the Instruments under the Instruments of Accession from the States?—No; it could not.

*Sir Austen Chamberlain.*

7231. Is it the intention of the Secretary of State at some time during our proceedings to make proposals of that kind to us?—Certainly; I think it is quite essential that in any Constitution Act, somewhere or other, there should be provision for constituent powers.

*Dr. B. R. Ambedkar.*

7232. I may draw attention to similar provisions in the present Government of India Act. There are certain sections mentioned in an appendix?—It is I think following the lines of every Constitution Act and following the lines of the Government of India Act itself.

*Marquess of Salisbury.*

7233. Would it include a power to adjust the relative representation of the States and British India?—No, not at all. I was not contemplating that kind of possibility at all.

*Sir Tej Bahadur Sapru.*

7234. Nor have we suggested anything of the kind?—No, it has never been suggested. All that has been suggested is that after a period of years some alteration of the details of the franchise should be allowed, and that I think is essentially a subject for discussion.

*Marquess of Salisbury.*

7235. I understand the Secretary of State is good enough to say that he will make some kind of communication to the Committee as to the sort of limits that he contemplates?—Yes, and I think, if Lord Salisbury would read the note upon constituent powers that was issued last winter—

7236. I have read it as well as I can at the moment, but I have not been able to appreciate it fully?—If Lord Salisbury will look at it again, always keeping in mind the fact that this is one of the questions which we have to consider and for which we have eventually to make some kind of provision in the Constitution Act, I think he will fully appreciate it.

*Dr. B. R. Ambedkar.]* It is the Fifth Schedule to the Government of India Act: "The provisions of this Act which may be repealed or altered by the Indian Legislature."

*Major C. R. Attlee.]* May I interpose a question arising out of Mr. Cocks's question as to the provision for increase of the franchise after a period of years; in the Simon Report it was stated: "This is a matter as to which the British Parliament cannot remain indifferent. If a

new Act of Parliament is to confer powers of self-government on the provincial councils, it should at the same time provide means for securing that these councils will in time rest on wider popular support than they can at present, so that the transferred powers may not remain in the hands of an oligarchy." That is paragraph 10 on page 94 of the second volume of the Simon Commission Report. Do I understand the Secretary of State differs from that view?—I am not assuming that changes of this kind are likely to restrict the franchise. My view rather is that this is essentially the kind of provision in which the Indian Legislatures themselves are most directly concerned, and it is a question for the Committee to consider, whether upon the kind of lines that I have suggested there should not be latitude given to them to make alterations after a period. It is an issue really between defining those powers in the Act or insisting upon a repealing or amending Constitution Act in the future. I incline rather to the first of those two alternatives.

Major *C. R. Attlee.*] That is diametrically the opposite point of view from the Simon Commission. They took the same point of view as Sir N. N. Sircar, that it is very unlikely that privileged classes will surrender their powers to somebody else unless there is express provision and held that the Commons was bound to make provision for future extensions in the franchise.

Lord *Eustace Percy.*] I should like to know what the Simon Commission did mean, because their report seems to indicate that, while Parliament cannot remain indifferent, Parliament must delegate powers to the Indian Legislatures to alter the franchise. That seems to me to be the clear meaning of the passage.

Major *C. R. Attlee.*] If the noble Lord will read further on he will find that provision was made that if within a certain time extension had not taken place, then Parliament should take action and set up a commission to see that it did.

Lord *Eustace Percy.*] I do not see how that is opposed to the Secretary of State's view.

Major *C. R. Attlee.*] Because the Secretary of State does not consider it is a matter for Parliament, but is a

matter that properly belongs to the Indian Legislatures themselves.

*Witness.*] I suggest to Major Attlee that it would be possible, really, to reconcile the two points of view. You give latitude to the Federal and the Provincial Legislatures, but you can, at the same time, retain the power in Parliament to legislate if it is satisfied that the Federal Legislatures and the Provincial Legislatures are not carrying out their duties fairly.

Major *C. R. Attlee.*] That is not the same thing as letting the Councils know that, unless they do progress, Parliament, under this Act, is bound to take action. You are leaving it perfectly vague.

Archbishop of *Canterbury.*] Would Major Attlee give us the reference to the Simon Commission Report.

Lord *Irwin.*] Page 94, paragraph 109 of the second volume.

*Chairman.*] My Lords and Gentlemen, it is my sad duty to inform the Committee and the Indian Delegates that Lord Burnham died suddenly last night. This is not the moment to recall his distinguished career or to refer to the great services in many fields, both in this country and throughout the Empire, which he rendered, but I may be allowed to express the profound sense of loss which we in this Committee feel, both Members and, I am sure, Delegates, at Lord Burnham's death, which deprives us of a valued colleague and so many of us of a true and trusted friend. Out of respect for the memory of the noble Lord, I think that the Committee would desire to adjourn now.

Sir *Tej Bahadur Sapru.*] My Lord Chairman, I would like respectively to associate ourselves with the tribute you have paid and with the sense of sorrow you have expressed.

Mr. *Zafrulla Khan.*] My Lord Chairman, so would I wish to associate myself with what has fallen from you at the loss the community has suffered at the sudden death of Viscount Burnham.

Sir *Akbar Hydari.*] My Lord Chairman, so would the Indian States.

Sir *Hubert Gidney.*] My Lord Chairman, may I on behalf of my community associate myself very sincerely with the



expression of sorrow and to say how much we appreciated Lord Burnham as a true friend of India.

[*Sir Hari Singh Gour.*] As one who worked with Lord Burnham on the Simon Commission and knows his work and value, may I beg to associate myself

with everything that has fallen from your Lordship on the lamentable death of our friend, Lord Burnham.

[*Begum Shah Nawaz.*] May I be allowed to associate myself with the expression of sorrow and loss, and to pay a tribute to Lord Burnham ?

(*After a short adjournment.*)

*Mr. F. S. Cocks.*

7237. I have only one more question to ask the Secretary of State. Secretary of State, taking into consideration the view that adult suffrage is the ultimate goal, is it in your mind that after a period of years the Indian Legislature may have the power of extending the Franchise but not of restricting the electorate ?—I do not think in my mind I had drawn any distinction between the powers of the Federal Legislature. I think I felt myself that if it is to be decided by the Committee, and by Parliament, to give these powers of alteration to the Federal Government and the Legislature after a period of time, then it is probably wiser to give that power without saying it shall be restricted one way or the other, but I would not like to prejudice the issue. It is a part of the more general question as to how future alterations in the Franchise should, or should not, be made.

*Lord Snell.*

7238. Secretary of State, I thought that in some words you used this morning, you were opposed to adult suffrage, or to a great extension of the franchise on political principles. Am I not right in assuming that you oppose it at the present time merely as a question of political expediency and practice ?—I do not wish to prejudge the future at all. I am, however, convinced that in the present circumstances it would be a political mistake. The change that it would involve would be too great, and administratively it could not be worked.

7239. All that I wanted to get from the Secretary of State was that he had not any firm conclusion in his mind as to the ultimate conditions ?—No, I think the ultimate conditions must be judged when they arise.

*Major Attlee.*

7240. This morning Lord Salisbury was asking you some questions about the difficulties of conducting elections, and he referred to personation and registration, and so forth. Would it not be your experience that with the large constituencies which we have in this country now, those are not matters of any real importance as compared with the past ?—I would certainly say, yes, and I believe that it will be found in practice now that in a great many constituencies candidates do not bother about personation agents at all.

7241. The next point I want to take you on is with regard to the direct election to the Federal Assembly. I do not want to go over the ground which Sir Austen Chamberlain has already trodden, but the point I want to get is as to the reality of representation. Take, for instance, the provision for the representation of Madras, Madras non-Muhammadan general constituencies. You are to have, I think it is, 19 seats of which four are to be reserved for the Depressed Classes ; that means, therefore, that you will have four member constituencies. In effect, it means that the Madras Presidency of between 40,000,000 and 50,000,000 population will be divided up into four constituencies returning four or five members. That is inevitable, is it not ?—(*Sir John Kerr.*) 16 constituencies, is it not ?

7242. No ; but, surely, if you are going to have four reserved seats for the Depressed Classes, it involves multiple constituencies, does it not ? Therefore, it would probably be a matter of four seated constituencies ?—I do not know what the arrangements are proposed for that ; we have not gone into that at all, but there might not be so many as four multiple

constituencies ; we might divide the constituencies into two.

7243. Two multiple constituencies ?— Eight multiple constituencies, but, as I say, we have not gone into that at all. I do not think the local Government have gone into that either. (Sir *Samuel Hoare*.) Perhaps. Major Attlee forgets that under our proposals we contemplate a further Inquiry, presumably on the spot, actually to delimit the constituencies.

7244. Yes. I am merely taking what really must be the effect. The effect is that there must be multiple constituencies if you are going to have reservation of seats. It follows from that your constituencies must be very large in area ?— Yes.

7245. And it follows, too, almost inevitably, from the composition of the Madras constituencies that at least one of those constituencies will contain three linguistic groups, Malayalam, Tamil, and Kanarese ?—Yes.

7246. Is it possible, really, to look upon that as a proper form of representation for members, to represent an enormous heterogeneous area like that ?—I think it is open to a great deal of criticism. My difficulty has been to find a better plan.

Sir *A. P. Patro*.

7247. That will depend upon the allocation Committee, how the seats are to be reserved ?—Yes. In any case though, I cannot myself envisage any scheme that does not mean very big constituencies.

Sir *Austen Chamberlain*.

7248. Does the Secretary of State envisage a system which would always involve each constituency having more than one member ?—No.

Marquess of *Lothian*.] This only arises out of the Poona pact. This problem which Major Attlee is mentioning arises exclusively out of the Poona Pact.

Major *Attlee*.] I am dealing with the proposal in the White Paper where it is definitely laid down.

Marquess of *Salisbury*.] Major Attlee would help us very much, if he would say that again.

Major *Attlee*.] There are 19 general constituencies, and four seats are to be reserved seats for the Depressed Classes, and under the reservation of seats, you must have multiple constituencies or there can be no reservation.

Marquess of *Salisbury*.

7249. Under those circumstances, how large will these constituencies be ?—(Sir *John Kerr*.) If I may say so, there are to be 19 general seats in Madras according to page 90 of the White Paper, and four of those general seats will be reserved for the Depressed Classes. I am not sure, as I say, what the arrangements are going to be, but I think the idea was that these seats reserved for the Depressed Classes should be in areas in which the Depressed Classes are of real importance. They will not be scattered all over the Province.

Major *Attlee*.

7250. But if you look at the Madras returns, I think you will see that on any population basis at all, if you are to give a large number of the Depressed Classes a fair show, you must have a good many constituencies, because although there are fewer Depressed Classes as you go north, yet in all the southern districts they form a pretty big element ?—Yes, that is so.

7251. Therefore, unless you are taking it purely on a community basis, and are going to make up for the Depressed Classes having no representation in one area by giving it to them in a greater measure in another, you must extend your reserved seats constituencies over a fairly wide area in the Madras Presidency ?—Yes.

Major *Attlee*.] The point there is another instance of the extreme difficulty of direct election at the Centre.

Marquess of *Salisbury*.

7252. It is not suggested, is it, that one or two of these constituencies should have the privilege of returning representatives of the Scheduled Classes and

the other Scheduled Classes would be disfranchised?—No, it would not be one or two, but it probably would be the whole 19.

7253. How would the Scheduled Classes in the remaining number be represented at all?—They would vote in the ordinary constituencies. (Sir *Samuel Hoare*.) I think what is not clear to Lord Salisbury is the exact manner in which it is proposed to deal with the Depressed Classes. The proposal is to pick out, we will say, for the purpose of an example, three or four areas of the country in which there is a substantial number of the Depressed Classes and regard those areas as the channel through which the Depressed Classes are represented. They will, therefore, form the three or four Depressed Classes constituencies, but, in doing that, we are not disfranchising the other voters in the same area. They will be voting for their own member in their own way.

*Sir Austen Chamberlain.*

7254. Then do I understand, following that up, that if he is not in one of the selected constituencies, the representation of a member of the Depressed Classes cannot be one of his own class or caste, but will be such influence as he may have on the selection of a man of another caste, and, that equally in those constituencies which are reserved for the Depressed Classes, those electors who do not belong to those classes will have their representation confined to representatives from among those classes?—No; the other classes will be in the general constituency.

7255. What is meant by the general constituency?—The general constituency is not a special constituency.

7256. Is it meant that, taking 19 general seats for Madras of which four are reserved to the Depressed Classes there will be one area in which the Depressed Classes are in a majority, which will be made into a constituency returning four representatives of those classes, and that the rest of the area of Madras will be one constituency returning 15 members?—(Sir *John Kerr*.) No, Sir, I do not think that is the intention. The general idea is that if you have fifteen

general constituencies in Madras, and four constituencies in which only the Depressed Classes will vote, and only members of the Depressed Classes will be eligible to be elected, that is 15 general constituencies, which means, in effect, caste Hindu constituencies.

*Major Atlee.*

7257. I do not think you meant to say that. You are now describing special constituencies of the Depressed Classes?—Yes, I made a mistake, I beg your pardon; not special, but general seats.

*Earl Peel.*

7258. Is it not fair to say that these seats specially reserved for the Depressed Classes is a special advantage for these classes? If you did not reserve them they might not get representation at all in the Centre? So far from being disfranchised, they get a special advantage?—(Sir *Samuel Hoare*.) That is so. I think Sir Findlater Stewart could amplify the answers which Sir John Kerr and I have just given. (Sir *Findlater Stewart*.) Out of 19 general seats, as I understand it, 11 would be ordinary constituencies, in which any Depressed Class voter qualified, could vote. They vote like anybody else, and, indeed, if one were lucky enough, they could stand and get elected, though it might not be very likely. In addition to these 11, what we call ordinary constituencies, there will be four plural constituencies—four double-member constituencies. In each of these double-member constituencies, which will be selected because the Depressed Class men are rather thicker there, a Depressed Class man must be returned as one of the two. That is, you will have four concentrated Depressed Class constituencies in which a Depressed Class man must be returned. You will have 11 ordinary constituencies in which a Depressed Class man may vote, if he is qualified, and, indeed, in which he may be elected.

*Chairman.*

7259. Is it the intention that persons not members of the depressed classes should be allowed to vote for a candidate of the depressed classes if they so desired?—Yes, after he has been selected

by a primary election. The Poona Pact was to this effect : I think there was a primary election by which four depressed class men were selected ; these four depressed class men then go to the polls in the ordinary election, and the whole of the Constituencies, the plural member constituencies, then select the depressed class man from amongst these four.

*Marquess of Zetland.*

7260. May I ask one supplementary question ? With regard to those four constituencies which will return Depressed Class representatives, will they overlap territorially more than four of the general constituencies ?—I do not think it has been worked out, but I think they will be chosen not to overlap. The whole area of Madras will be divided up into 15 areas ; 11 of these, as I see it, will be of the ordinary kind.

*Dr. B. R. Ambedkar.*

7261. Fifteen will be general ?—I make 11 ordinary, making 19 in all ; 11 single members and four double members.

*Mr. Zafrulla Khan.*

7262. May I put one question to Sir Findlater Stewart to clear up one aspect of it ? I merely want to understand it. Supposing a panel of four is chosen and then they proceed to contest this particular constituency reserved for them amongst themselves. One knows if a contest comes forward, everybody will vote who can vote in a general constituency, but supposing three of them say : "We do not wish to contest this election," would it be possible for them to withdraw before the election takes place ?—It is an interpretation of the Poona Pact. (Sir Samuel Hoare.) What does Dr. Ambedkar say ?

*Dr. B. R. Ambedkar.]* That is the view, that it is not obligatory upon all four of them to contest.

*Sir N. N. Sircar.]* That is the view, but that is not the language used.

*Mr. Zafrulla Khan.]* Another aspect is, are the Depressed Classes in any of these particular constituencies bound to put forward four candidates ? Supposing they put forward only one, will the terms

of the Pact be complied with ? What does His Majesty's Government understand the Pact to mean in that respect ?

*Sir A. P. Patro.]* The purpose of preliminary election will be defeated. What is meant by preliminary election is electing four people for a seat ?

*Sir N. N. Sircar.]* Dr. Ambedkar will vouch that I am putting the interpretation which was understood at the time of the making of the Poona Pact. It was understood that the Depressed Classes should have the liberty, instead of electing four, to elect one only. In that case, automatically the one got through.

*Dr. B. R. Ambedkar.]* That is quite right.

*Mr. Zafrulla Khan.]* If they put forward four, one could withdraw.

*Dr. B. R. Ambedkar.]* Yes.

*Marquess of Salisbury.*

7263. So in that case, the Depressed Classes will select the man they like and he will go through, necessarily ?—Yes.

*Sir A. P. Patro.]* Without any contest, because it is only a single candidate that has been put forward for that community, and he will be elected along with the other candidate who stands for a general election.

*Sir Austen Chamberlain.*

7264. Let me assume that one of these two-member constituencies is presented by one nominee of the Depressed Classes and three other candidates, the three other candidates come out at the head of the poll, and the nominee of the Depressed Classes comes out at the bottom of the poll. That is the hypothesis—it is an extreme one. I understand that the Returning Officer would declare that the man at the top of the poll was elected and the man at the bottom of the poll was elected ?—(Sir Findlater Stewart.) Yes, that is so.

7265. And inasmuch as there are only four Depressed Class representatives to be chosen in that form, and if the Depressed Classes choose to nominate four, they must occupy a seat in each of these four double-member constituencies, why are they not returned direct instead of

going through a form of election which is a farce?—(Sir Samuel Hoare.) Sir Austen is now raising a very big question, and the whole question of separate electorates, an issue particularly in its application to the Depressed Classes that has created almost more controversy than anything in India. This was the result of a Pact, accepted as we understood it, by the accredited leaders of Hinduism and the Depressed Classes. This was the plan upon which they agreed. As they are agreed to the plan, and we felt it was within the terms of our communal decision, we accepted it; but if he puts the question: Why not separate electorates? he will find that although theoretically he may have a good case for it, it will stir up a most enormous amount of controversy.

Major Attlee.] I think Sir Austen has confused two number fours. There happen to be four Depressed Classes' seats in the Madras Presidency, but the provision for representing the Depressed Classes is that in each constituency they should choose a panel of four and should go forward for the election of other candidates.

Sir Austen Chamberlain.] It is not that they should choose four for the four reserved seats, but four for each of the reserved seats?

Major Attlee.] Yes.

Sir Austen Chamberlain.] I am much obliged to Major Attlee.

Mr. Zafrulla Khan.] I do not want to create any further controversy, but I rather understood it in a slightly different sense from what Sir Findlater Stewart has explained. I understand it in this way: 15 general seats to be filled in the ordinary way; that four constituencies, which may coincide with four of the 15 to be selected which will return only a Depressed Class member, and that Depressed Class member to be returned on this basis: that a panel of four is first to be selected by the Depressed Classes' electors within in each constituency, and then those four are to contest among themselves for the seat, and at the final election each qualified voter would vote. Is not that rather the case? I thought it was not going to be a double member in regard to some constituencies.

Major Attlee.

7266. I think Mr. Zafrulla Khan must be wrong, because the probability is that there will be no such electors on the franchise as at present, because they are elected by the other castes?—(Sir Samuel Hoare.) My Lord Chairman, I think Major Attlee has raised this question mainly for the purpose of emphasising the size of the constituencies. A detailed discussion has arisen out of that general question, and I am inclined to think that the best plan would be for me to put in a Note as to how these Depressed Classes' constituencies will really be worked. It is rather a complicated and technical affair, as we have seen in our discussions, and I think that will probably be the best plan.

Chairman.] We shall be obliged if you will do that.

Major Attlee.

7267. I am afraid I started an extraordinary hare; it was not the one I was hunting. The point I wanted to get at was with regard to the reality of representation. The Secretary of State gave me a reply yesterday when I was asking about the prospects of forming parties, and he suggested that those parties would be much more regional than they are going to be between one type and another. If they are going to be more regional, the divisions of parties, is not that a reason for having the representation through the Councils rather than by direct election, if those are to be the divisions?—I am finding myself in a great difficulty in answering questions of this kind because I have so often myself made the argument that is in Major Attlee's own mind. But I have always come back to the very difficult obstacles in the way, if one does not adopt a plan of this kind. I think I would agree with the view that he has just expressed in his question.

7268. The next point I take will be with regard to the issues at the Centre. Would it not be true to say that, apart from finance, and so on, the Legislation passed at the Centre will most probably have to be implemented in the Provinces? That is to say, anything like social legislation and labour legislation—the actual carrying out will be in the Provinces for the most part?—It would certainly be true to say that the machinery,

for the most part, and, indeed, almost entirely, will be the Provincial machinery.

7269. And, therefore, would it not be useful that the people who will have to have the responsibility of administering these Acts, should be as closely connected with the Centre as possible? Otherwise you will have people with no responsibility for carrying out these Acts, passing them cheerfully at the Centre, and leaving the Provinces to bear the brunt of carrying them out?—I think there is a good deal to be said in favour of Major Attlee's suggestion.

7270. There are only two points with regard to the question of indirect election. There is just another one: At the present time there is a comparatively limited franchise at the Centre?—Yes.

7271. Although we may be legislating for a certain time, one would suggest that some time or other that franchise might be extended at the Centre?—Yes.

7272. If you got at all far in that, would not your constituencies for the Centre become quite unworkable by reason of the number of electors, or alternatively, your Federal Assembly become quite unworkable by the large number of members you would have to have sitting in it? Therefore, is it not the fact that this provision for the Centre does not really allow, at all events, for groups of the franchise?—I think it is very difficult in practice to avoid the kind of dilemma that Major Attlee has suggested.

7273. What I am trying to get at is, that granted the difficulties of the other members, I am trying to weigh the difficulties that exist already?—Yes, I see.

7274. Now one further point has been put forward, and that is that India has become accustomed to a system of direct election, and it has worked?—Yes.

Major Attlee.] But has it not generally been said by observers that the connection between those elected to the Centre and the electors is extremely slight?

Mr. Rangaswami Iyenger.] No, not to my knowledge.

Major Attlee.] If that is the case, I can only say that it has been said to me by persons elected to the Central Legislature.

Witness.] I would myself put the answer in a rather different way. I would say myself from the information that is available to me, that the contact between the member and his constituents is closer in the Provinces than it is at the Centre.

Major Attlee.] There is a further point with regard to what has been suggested, that is the question that the issues at the Centre might be different from the issues in the Provincial Legislature. Will not it be extremely difficult in these very large constituencies to get any issue other than a very simple one put across? I put that because I think probably Mr. Rangaswami Iyenger had a very simple issue, namely, that of nationalism, to put across but it is not such a simple matter in every case.

Mr. Rangaswami Iyenger.] May I deny that it was only very simple issues?

Major Attlee.

7275. The franchise for the Assembly is such that only the well-to-do classes will be represented at the Centre. Is not that so, almost certainly?—The franchise under the present system or under the White Paper?

7276. Under the system proposed you are going to have a limited franchise, that is to say, a franchise confined on the whole to the better off classes, a constituency that will cost a very great deal of money to fight?—Yes.

7277. Therefore it is practically certain from all experience that only the wealthier classes will manage to get into that Assembly?—Or the classes supported by big organisations.

7278. Except for a few special seats here and there given to Depressed Classes, and so forth. Broadly speaking, the make up of the Centre will be what you call Conservative or well-to-do?—It will certainly be constituted upon a definitely higher franchise than the Lower Chamber under our proposals.

7279. One of the Central subjects is Labour laws, is it not?—Yes.

7280. Do you think there will be adequate representation at the Centre for dealing with technical matters of Labour legislation when the Labour representatives will be very very slightly represented there at all?—Major Attlee will

remember that we made provision for ten special Labour seats in the Lower House, page 90 of the White Paper.

7281. There will be an inconsiderable fraction in the House, and they are unlikely to find any other persons coming from that class?—There are also 19 members of the Depressed Classes; presumably drawn from the labouring classes. Major Attlee should also remember that, speaking generally, Labour legislation is concurrent, both the Centre and the Provinces having powers of legislation.

Major Attlee.] But it has, I think, been brought out in evidence that it would be undesirable to have separate Labour codes in adjacent areas on most subjects.

Mr. Morgan Jones.

7282. I have only one question, following up the point which Major Attlee put to Sir Samuel. He quite rightly pointed out that there are 19 Depressed Classes representatives, and a certain number, 10 Labour special, but there are also eight Europeans, are there not, and 11 Commerce and Industry?—Yes.

7283. What is the special case for so relatively large a representation for the European section as compared with the special representation of Labour?—That is a very difficult general question to answer. We felt that the European interests were so great in India that we must give them adequate representation.

7284. But they would be mainly commercial, would not they?—Yes.

7285. Commerce and Industry also has 11 special seats?—Those would not all be European.

7286. No, I quite appreciate that, but anyway they do represent Commerce, whether it is European or Indian?—Will you repeat that?

7287. I am sorry: It is true that Commerce and Industry is not specially reserved for European Members. That is quite true?—Yes.

7288. But they do represent Commerce whether it is European or India?—Yes.

7289. Therefore it may be assumed that they will look after the interests of Europeans and Indians from the point of view of commerce?—It is very easy

to say that one or other of these groups ought to be bigger or smaller, and it was really one of the most difficult decisions we have had to make, and I imagine it was one of the most difficult recommendations that Lord Lothian's Committee had to consider. Upon the whole we feel that we have held the balance fairly between these various interests. Perhaps either Lord Lothian or Sir John Kerr, would add a word from their own experience of the actual enquiry in India on these matters. Would you say a word, Sir John?—(Sir John Kerr.) The great difficulty is—take the case of the Europeans, for instance; there are eight altogether.

Sir Hari Singh Gour.

7290. Fourteen, because see the footnote?—I will take the European seats pure and simple, they number eight. That is eight seats in eight provinces, One seat to each province in which the Europeans are of any importance. What we felt was that you cannot cut them down below one, very well.

Mr. Morgan Jones.

7291. How do you cut down the labour, how do you allocate the Labour special, 10; one to each Province?—Labour is not a community like the Europeans.

7292. But it has very vital interests?—Organised industrial labour is not to be found in all the Provinces. The Labour seats are distributed according to the importance of organised labour in the various Provinces. There is only one in the whole of Madras, although Madras is the most populous place in India.

7293. I am not making suggestions about European representation, although I have my own views about that, but I am comparing the Labour representation with it as being, in my opinion, an unjust balance. Sir Samuel said, in his opinion, these representatives will safeguard and watch the interests of Labour in the Lower Chamber, as I understand it. When these Bills go into the Upper Chamber, and are there discussed, who is to look after Labour there?—(Sir Samuel Hoare.) It is perfectly possible that the Councils, amongst the Members

of the Second Chamber whom they elect, will elect Labour representatives. Labour representatives are not disqualified from being elected to the Second Chamber. They have their chance just like anybody else.

7294. Just as much chance as I have of election to the House of Lords?—I am not sure whether that is so, when one takes into account the number of depressed classes representatives in the Provincial Councils. (Sir *John Kerr*.) In Madras, for example, there are 30 depressed class representatives, and six Labour. That is 36 Members in a Council of 215 who will be able to unite and get a Labour Member sent to the Council of State, if they so desire.

Mr. *Zafrulla Khan*.] Or more than one. Two, I think.

Mr. *Morgan Jones*.

7295. To secure one representative?—Possibly one representative; perhaps more than one. (Sir *Samuel Hoare*.) It might be one, two, three or four.

Mr. *Morgan Jones*.] I see that point.

Marquess of *Lothian*.] Secretary of State, referring to Sir *Austen Chamberlain's* general thesis, would I be right in saying that the almost universal principle upon which Federal Governments have been constructed in the past has been that the Upper House has represented the units and the Lower House the nation, that is to say, the Upper House has been elected largely by the Provincial Legislatures, or by the Provinces or States voting as a unit, and the Lower House has represented direct constituencies, and therefore represented the nation. I think that is universally the case.

Sir *Austen Chamberlain*.] Is that true of the Commonwealth of Australia?

Marquess of *Lothian*.

7296. I think so?—I would accept the view of a great Constitutional expert like Lord *Lothian* on a matter of that kind. I cannot say offhand myself whether it is so or not.

7297. I think you will find that that is, I will not say absolutely without exception, but certainly the general rule. May I follow a little further what would be the effect of making the Central Legislature wholly representative of the units,

namely, the Upper House the representatives of the Governments, and the Lower House the representatives of the Assemblies. That would mean that the Central Legislature would be wholly representative of Provincial opinion? It would tend, would it not, to mean that the Centre would be a combination, possibly conflicting, of Provinces, and not a body representing the nation as a whole?—I suppose that would be so, but I am inclined to think that in any case the representation will be to a considerable extent Provincial.

7298. It will certainly in the Upper House?—I should have thought in the Lower House also with Provincial constituencies. I think the Provincial atmosphere will be pretty strong.

7299. It will. May I take it a stage further by way of comparison?—Yes.

7300. Let us take the analogy in Great Britain of the London County Council, which represents the capital City, and a very large number of voters. Supposing the National Legislature were wholly composed of people elected by the London County Council, the great City Corporations of the North and County Councils, would not it have the inevitable effect of wholly blurring the line of demarcation between those two powers, and having one of two effects, either that the London County Council election would turn wholly on national issues, or that the National Government would be wholly controlled by the County Councils and by the London County Council?—I know that that argument is often used, and it is a very strong argument, and I would not like to say that it does not impress me. At the same time, I do think it can be pushed too far. If I take now my own experience on the London County Council (and here perhaps Lord *Peel*, with his even greater experience would confirm me or contradict me) I am inclined to think that if a great body like the London County Council had to nominate representatives for one or other Central Chamber in England, they would take the election on its own merits to a great extent anyhow, and that considerations other than purely London municipal considerations would enter into the election. But that is just a matter of opinion. What would Lord *Peel* think about it?



Lord Peel.] I should very largely agree with the Secretary of State, because when these men are elected, and if they were gathering together to form an Electoral College, I should think two things. One is that they would regard themselves as an Electoral College for that purpose, and, secondly, having been elected a great many times on the London County Council, I think they would elect me for my views on municipal subjects and they would not bother me very much with national and Imperial subjects, and, therefore, I should be pretty free to exercise my view as an electoral unit of that County Council.

Lord Eustace Percy.] Supposing the burning question of national politics was how much grants in aid the Local Authorities were going to get from the Exchequer which is going to be the situation at the beginning of the Constitution, do you then think that you would be left wholly free by the London County Council to exercise an independent judgment on that matter.

Earl Peel.] I was wondering whether the units in India would be more disinterested, possibly, in that matter.

Lord Eustace Percy.] I have not seen any signs of it.

Marquess of Lothian.

7301. What I am driving at is this. I think the system is a sound one when applied to the Upper House, but when you go on to say that the whole of the legislative apparatus, and therefore the Ministry, at the Centre is wholly elected and controlled by the Provincial Legislatures and the Provincial Governments, either the Provincial point of view will become completely predominant and overrule the national point of view, or the Provincial elections will turn upon and be hopelessly blurred by national considerations?—I still think Lord Lothian is stating the case too high, but I do not want to give an answer which implies that I disagree with his general fear that this kind of thing may happen, supposing we adopted these lines of election. I think there is a risk.

Marquess of Lothian.] I am giving what seem to me to be very powerful arguments for the proposals in the White Paper. You will understand that. May

I turn to the second question of the possibility of contact between the constituents and the members in the Central Assembly?—I do not propose to raise the question on the personal side, because, I am sure the Indian Delegates will deal with that much better than I can; but it has been suggested by Major Attlee that, supposing you begin with the proposals of the White Paper, you are launching a system which will not be able to carry to its logical conclusion under any circumstances the adult franchise. Have you studied the conditions in America, where, if I may read a section from the Franchise Committee's Report, the area of the United States is three million square miles, of which a third consists of thinly-populated mountain territory. The population is 122 millions. The number of members of the House of Representatives is 435, or one for every 6,958 square miles and 282,000 of the population. That is one page 166, paragraph 403. That is the basis for the Lower House. In the case of the Senate the number is 96 and two members are elected by each State voting as a single constituency, of which the largest is New York, with an area of 49,000 square miles and a population of 12½ million. Therefore, I venture to suggest that, as a matter of logic and leaving out of account the conditions in India to-day, which at this moment clearly are not comparable, there is nothing inherently impossible in developing a system with very large constituencies containing very large numbers of voters, because it has worked in practice in the largest democracy in the world.

Sir Austen Chamberlain.] Are we going to discuss how it has worked?

Marquess of Lothian.] May I answer Sir Austen Chamberlain?

Witness.] I think that is so, but it must obviously depend on means of communication and all the other methods actually available at the time.

Marquess of Lothian.] That is exactly why the proposals of the White Paper are for a much narrower basis, but I was dealing with the valid argument put forward by both Sir Austen Chamberlain and Major Attlee, that you are starting a system which cannot possibly be extended beyond its present basis, and I

think there is no dispute that the experience of the United States shows that it is not inherently impossible.

Marquess of *Salisbury*.] I see my noble friend calls them astronomic numbers.

Marquess of *Lothian*.] So they are.

Marquess of *Salisbury*.] It is unusual to use astronomic numbers when you are dealing with terrestrial matters.

Major *C. R. Attlee*.

7302. We have no proof that if the population of the United States went up to that of India that system would work?—We have also to take into account the fact that the population of India increases very quickly, and at the present rate, in 30 or 40 years' time, it will be immensely greater than it is now; but all these questions are really questions for the future. I am sure of that.

Marquess of *Lothian*.

7303. I do not want to discuss the women's franchise in detail, but there is a point of some importance I think to be brought out at this moment. According to the White Paper, 14 per cent. of the population of 27 per cent. of the adult males, would be enfranchised: that is about 35,000,000 people. You estimate that one-seventh of those will be women, according to the White Paper. Is not that correct, Secretary of State?—Yes.

7304. That is to say, your proposals are based on the assumption that there will be about 5,000,000 women voters?—Yes.

7305. Of those, 2,000,000 will be property-owing women?—Yes.

7306. The number who will be enfranchised on the educational qualification will be very small?—Yes.

7307. Much less than 100,000?—Yes.

7308. That is to say, your own proposals are based on the assumption that 3,000,000 women will be on the roll in respect of the wives' qualification?—Yes, roughly that is so.

7300. The total number of women who will be enfranchised on the wives' qualification, if they are all put on the roll, is only just over 4,000,000?—Yes.

7310. You would therefore expect, on your calculations, that 3,000,000 out of

the 4,000,000 wives will in fact apply for the vote?—Yes, if not in the first election, in the subsequent elections.

7311. On that assumption you think it is administratively possible to poll 3,000,000 women voters as wives?—I myself think it might be difficult at the first election.

7312. But your own proposal contemplates that they will do so, because you say it will be one-seventh?—It is so difficult to say, really, how many women will or will not vote at the first election. It is very difficult to say how many will apply at the first election. We have based our estimates upon what we think is a fair figure, and we have also based our proposals upon what we believe to be manageable, at any rate, at the first election.

7313. That is exactly what I want to get at because you have said that one-seventh of the electorate would be women, which means that 5,000,000 women would be on the roll, of whom 3,000,000 would be wives who had made their own application. That is the basis of your proposal?—Yes.

7314. Therefore, you are contemplating that it is administratively feasible to have 3,000,000 wives on the roll?—(Sir *John Kerr*.) On application.

7315. On application?—(Sir *Samuel Hoare*.) Yes.

7316. Would it be saying too much to say that it could hardly be administratively impracticable to put 4,000,000 wives on the roll if you admit that it is administratively practicable to put 3,000,000 on?—Our difficulty in dealing with the question of the women's vote has really been twofold. First of all, we have found the greatest possible objections urged, I think in almost every Province in India, against a differential education qualification for women. Secondly, we have had very strongly expressed views that it would be well to move cautiously and that there may be considerable trouble, anyhow, in certain Provinces in attempting ourselves, at any rate for the first election, to put the wives on the registers. Social conditions being what they are, it has been impressed upon us that it would be wiser, at any rate at the start, to leave it to the women actually to apply. Those in a sentence or two

are the two main reasons why we make these proposals, first of all, for removing what was originally proposed by the Lothian Committee, namely, a differential educational qualification for women as distinct from men, and, secondly, by saying that, at any rate at the start, the wives should get on the register by application.

7317. Would I be correct in drawing this inference, Secretary of State, that unless three million wives out of four millions do in effect apply and get on the register, the number of women voters will be much less than one in seven, which is what you say?—Then, quite obviously, Lord Lothian must compare that figure with the number of men who actually vote.

7318. They have not got to apply to be put on the roll?—No; but if he is taking the percentage of the women who actually vote, he must then take the percentage of the people who vote.

7319. No, I am talking of the number of people who have the right to vote?—I would still say that the right to vote is one in seven. The right is there to apply or not, as they wish.

7320. It is only one in seven on the assumption that three million apply?—The woman's right is exactly the same for the purpose of applying to vote as it is as to whether she registers her vote or not, it seems to me.

7321. No, because the men are put on the roll without having to apply and the women are only put on if they do apply. Your calculations that the proposals involve on the roll one-seventh of the total electorate being women are based on the assumption that out of four million women who are wives of existing council voters, three million will apply to be put on the roll. If that does not come true the proportion of women will be much less than one in seven. If it is true, I am wondering whether the administrative arguments against application have not been over-estimated by the authorities in India, because it only means a million more—four million instead of three million?—It is not only a matter of numbers, it is a matter of social conditions, and we have received some grave warnings from one or two Provinces that, at any rate for the first election, if we sent

round people inquiring into details in families with a view to putting women on the register, there might be considerable trouble.

Mr. M. R. Jayaker.

7322. Does the Secretary of State agree with the view taken by many people in India, especially women, that if the necessity of applying is strictly insisted on the three million women voters would be seriously reduced?—We have not got any accurate estimate upon which we can base our view. Certain Provinces think that a very large number of women would apply. Others think that the proportion would be much smaller.

Sir Tej Bahadur Sapru.

7323. Could Sir Samuel Hoare give us an idea as to what view has been put forward by the various women's organisations in regard to this requirement about application. My impression is that they are very much opposed to it?—I think that is so. I think the women's organisations, as they would be expected to be, are opposed to the principle of application.

Mr. M. R. Jayaker.

7324. And some of them have serious apprehensions that if this requirement of application is insisted on the three million number will be seriously reduced?—I think we may take it that that is the case.

Mr. Morgan Jones.

7325. May we take it it is the men's organisations who have advised this extreme caution?—No, it is the Provincial Governments mainly.

Begum Shah Nawaz.

7326. Is there a single woman in the Provincial Governments?—No, I do not think there is.

Sir Akbar Hydari.] Would it not be that if you left it for application then the proportion of women voters who actually went to the poll would be much greater than the proportion that it would be if you automatically brought in every woman voter and left her to vote or not. In other words, would it not be that the

mere fact that a person applied to vote meant that that vote would be really used effectively and therefore the proportion that would exist between those who actually went to the poll if you insisted upon application was a much greater one than in the other case and therefore the ultimate number voting was practically the same?—Have I made myself clear?

Begum *Shah Nawaz*.

7327. May I suggest then that this should apply equally to both men and women?—We are doing it, the Begum will remember, with the men for the educational qualification. Sir John Kerr reminds me that in Ceylon it was expected that not many women would apply. In actual practice, very large numbers did apply.

Sir *Austen Chamberlain*.

7328. If you put a voter on the list without any action on his part, you have no means of knowing whether he takes enough interest to go to the poll, or not; but if the voter has applied to be put on the list, you may be pretty certain that he is going to use his vote, may you not?—I would have thought so.

Sir *Austen Chamberlain*.] That I understand to be Sir Akbar Hydari's question.

Sir *Akbar Hydari*.] Yes.

Sir *Austen Chamberlain*.] If I found my name was omitted from the Register and took the trouble to get it put on, it is a pretty clear indication that I meant to use my vote.

Marquess of *Lothian*.] Are you in favour of making the condition of application apply to the men, as well as to the women?

Sir *Austen Chamberlain*.] I am not referring to the condition; I am talking about the results. When you are considering the number of women who vote, if there are 3,000,000 women who have applied for their names to be put upon the list, the larger proportion of that 3,000,000 will vote than of 3,000,000 men who have not applied to have their names put on the list.

(*The Secretary of State withdraws.*)

Marquess of *Zetland*.

7329. Sir John Kerr, the question that I am in doubt about arises out of a ques-

tion which was put by Lord Lothian. I understand that the wife of a qualified voter for the Federal Legislature is automatically entitled to a vote for the Provincial Legislature provided she applies to be put on the Roll? Is that so?—(Sir *John Kerr*.) That is the intention of the White Paper, yes.

7330. What happened in the case where polyandry is in existence? Can all the wives of a man apply to be put on the Register?—No.

Sir *Hari Singh Gour*.] It is not a case of polyandry, it is a case of polygamy.

Marquess of *Zetland*.

7331. No, it is a case of polyandry?—We propose that not more than one wife should be qualified in respect of her husband's vote.

7332. Now I want to pass just for a moment to the question of group election. I took the responsibility for placing the possibility of group election before the First Round Table Conference, where I thought it met with a considerable measure of support. I admit I did so largely as a result of the arguments in favour of it which you yourself put before me, and you quite understand, therefore, that when the master abandons the position, the position of the pupil is a rather difficult one. But the question I want to ask you is this: You were the Chairman, were you not, of a Committee which considered that question?—Yes.

7333. Where there other Members of that Committee who had had long administrative experience in India?—Yes, several.

7334. When you considered that question, were not all these possible objections to the system present to your minds when you came to your conclusion in favour of it?—No, they were not. My mind was very much changed by my visit to India, when I found that the conditions of things in the villages had changed to a very considerable extent since I had done work in the villages myself, about 15 years or more ago. The conditions then were, I think, favourable to working the system on more or less patriarchal lines. I should have gone into a village in those days and got the people into rough and ready groups and said "Who is going to represent this

group, and who is going to represent that group", and they would have told me very quickly what was going to happen. But nowadays, what with political agitation in the villages, the fact that in a great many villages there is an agent of the body which is called Congress, I am not saying anything against them—they have got their agents in most of the villages in northern India, at any rate, and they have made an enormous difference in the village outlook. All those things have done away with that sort of friendly spirit which existed, and which to my mind in 1927 and 1928, I think it was, made it justifiable to put forward this group system proposal. Another point, of course, was the very unexpected strong opposition with which the group system proposal met both from non-official gentlemen and from officials, both European and Indian, particularly Indian officials whom I trusted very greatly, whose opinion I would take in a matter of this kind before that of most European officers, and they were, I think, almost unanimously against this group idea of the Royal Empire Society.

7335. Of course, what you have told me naturally will have great influence upon my mind. I am now a little inclined to change my own mind on that question after hearing what you have said. Then just to return to the franchise for the Central Legislature once more for a moment, I do not want to go over the whole ground, because it was very fully covered by Sir Austen Chamberlain and others, but I thought I understood you to say in answer to a question, that at the present time very little interest is taken in the elections for the Central Legislature. Was I correct?—Comparatively little.

7336. Does not that suggest to your mind that the present system is, therefore, not a very suitable one, that it is somewhat artificial?—No, Sir. I think it is that the subjects that are discussed in the Central Legislature are not such as appeal very much to the ordinary provincial voter. The one exception is that of tariffs. The rural voter is beginning to find now that the imposition of tariffs and the grant of bounties, and so on, is making a considerable difference to him in regard to some of the necessities of life. The question of build-

ing iron bridges, for instance, is a very important one in Assam, and the District Boards in Assam had to curtail their bridge-building programme because of the serious rise in the price of iron. Now 15 years ago, there was not a man, I should think, in Assam who knew what a tariff was or understood it in the very least. Now, it is very common knowledge in the villages what tariffs are, and what the effects of tariffs are. In that way, I anticipate that the interest in the affairs of the Central Legislature will grow as the Provincial people begin to see how it affects them in their daily life, but at present the effect is not very large and is confined to a few subjects, like tariffs.

7337. Just one or two questions about the size of these constituencies; I merely want to verify my own figures; I am not sure that I am quite correct. According to the proposals of the White Paper, there will be, I think, in Madras eight Muslim constituencies for the Federal Legislature?—Yes.

7338. Will those eight constituencies cover the whole of the Madras Presidency?—I think so, yes. Of course, the constituencies have not yet been delimited in any way; I do not think anybody has considered that really, but they will undoubtedly cover the whole Presidency unless in any district there were very few Muhammadans.

7339. If that is so, as far as I can make out, the average size of a Muslim constituency in Madras would be very nearly 18,000 square miles?—17,784.

Sir Joseph Nall.] Is that the average?

Marquess of Zetland.

7340. That is the average size?—Yes.

7341. Of course, some might be even larger than that?—Yes.

7342. But the average size will be very nearly 18,000 square miles?—Yes.

Marquess of Zetland.] Now turn to the Punjab.

Mr. Zafrulla Khan.

7343. If Lord Zetland will excuse the interruption, could Sir John inform the Committee how many general constituencies there are at present in Madras?

It is smaller than eight, is it not?—Yes, smaller than eight.

7344. And do they not cover the whole of the Madras Presidency at present?—Yes, I presume so.

Marquess of Zetland.

7345. Might we turn to the Punjab for a moment? I understand there are to be six general constituencies and also six constituencies for the Sikhs?—Yes; that is page 90 of the White Paper.

7346. In the case of the general constituencies, surely, they will be spread over the British part of the Punjab, but I imagine the same would apply to the Sikh constituencies?—Yes. Sir Malcolm Hailey says they will be.

7347. What will be the average size of those constituencies?—(Sir Malcolm Hailey.) We can give you the average size of the general constituencies and of the Muslim constituencies; I do not think we have worked out for the moment the average size of the Sikh constituencies. It would not take long to do it. (Sir John Kerr.) 16,000 square miles.

Sir Austen Chamberlain.

7348. May I interpose a question? I am so puzzled about this. Would Sir Malcolm explain if the six Sikh and the so many general constituencies are to be spread over the whole of the Punjab? Would the whole Punjab be divided into six districts for the Sikhs, and in the same way, into a proportionate number of districts for the other members, or will there be special geographical constituencies returning the Sikh representatives, as was explained to us in the case of the Madras Depressed Classes?—(Sir Malcolm Hailey.) No, Sir; the system is at present, and it will no doubt be followed in the future, that for these major communities the electorate extends over the whole Province, divided, of course, into constituencies. It is only proposed in the case of some of the smaller communities, that we might on occasion for the sake of convenience take special constituencies, such, for instance, as might be done in the case of the Anglo-Indians, or Indian Christians, but for the major communities and for the general constituencies, they would extend over the whole Province

divided into constituencies. If you take the Punjab, to which you were referring, there would be three of these major communities, and the Muslims would have 14 constituencies extending over the whole Province; the Sikhs would have six constituencies extending over the whole Province, though I may say that there are districts in the Punjab where there are so few Sikhs that the numbers in those districts would not make any difference to the constituency. Then the general constituencies would also extend over the whole Province, and in the case of the Punjab, they would only be six. That is to say, there are 28 districts in the Punjab, and you would group them roughly together for the purposes of convenience of voting. You might take it, very roughly speaking, that there would be two districts for each Muslim constituency. It would not come out quite to four districts for each seat, and for each general constituency, but it would come, roughly, on an average, to about four districts—between four and five. The areas given by that, would mean that each Muslim constituency in the Punjab would comprise 7,000 square miles with an average total population of 953,000 and a voting population of 27,000. Each general constituency would comprise 16,500 square miles with an average total population of 1,100,000 and a voting strength of 32,000. I am, of course, giving averages only, as we have not yet made up the constituencies. I could give you similar figures for any other Province.

7349. And each Sikh constituency in the Punjab?—Each Sikh constituency in the Punjab would be in area 16,500 square miles.

Marquess of Salisbury.

7350. These areas will not be co-terminous in any way. Will they all be differently delimited?—Yes, that is done at present. It is made up in different blocks of districts, if I may express it in that way. Different blocks of districts are made up into one constituency for purposes of convenience; that is done at present.

Sir Tej Bahadur Sapru.

7351. But they are generally neighbouring districts?—They are neighbouring districts.

Marquess of Zetland.] The effect of your replies to my questions is that there will be a very large number of constituencies which will be at least from 16,000 to 17,000 square miles in area. Have you realised that an area of that extent is rather more than twice the size of Wales and Monmouth, and do you realise that Wales and Monmouth send 35 members to the House of Commons in this country ?

Mr. Morgan Jones.] Too few.

Marquess of Zetland.

7352. Do you still really think that constituencies of that immense geographical area are a practical proposition if representative Government is to be real ?—(Sir John Kerr.) As the Secretary of State said, what is the alternative ?

7353. The alternative is the alternative proposed by the Simon Commission, which is set out in the Second Report of the Simon Commission. Might I just read only a few lines from the Report ? On page 116 of the Second Volume of the Report of the Simon Commission, you will find these words : "Representative institutions were devised as a means of getting over the difficulty created by the expanding size of States, and it appears to us to be in strict accordance both with the theory of representation and with the requirements of common sense to say that, when the total area to be provided for is so huge that direct election would involve either impossibly large constituencies, or an impossibly numerous Assembly, the solution is to be found through 'Election by the Elected'—which is all that indirect election means." In other words, election by members of the Provincial Legislatures. That is the alternative.

Lord Rankeillour.

7354. One or two questions, Sir John Kerr, on detail rather. Who at present prepares the register corresponding to the overseers in this country in the first instance ?—Generally, an officer who is called a Deputy Magistrate.

7355. When the register is prepared, is it marked in some way to show to which communities the various voters belong ?—I think there would be a separate part of the register kept for Hindus and a

separate part of the register kept for Muhammadans.

Mr. Zafrulla Khan.] There are separate registers altogether.

Lord Rankeillour.

7356. At present is there any distinctive mark for the Depressed Classes, or a separate register for them ?—(Sir Malcolm Hailey.) Not at present.

7357. But there will have to be in the future ?—Yes.

7358. Before the Sub-Committee yesterday on which I was sitting it was given in evidence that there are different views as to whom the Depressed Classes are ; where they begin and where they end. Would that make a practical difficulty ?—(Sir John Kerr.) That has been decided, I think, in the White Paper. (Sir Malcolm Hailey.) It is now scheduled.

7359. I have seen the Schedule ; but would that Schedule be generally accepted ?—(Sir John Kerr.) Yes.

7360. The registration officers would have to follow that Schedule ?—Yes.

7361. And they would naturally know to which caste he belonged ; there would be no difficulty about that ?—No difficulty at all.

7362. Then another point I want to ask is this : Is it proposed to have the elections for the general seats and the communal seats on the same day and in the same polling booths ?—As a rule they are held on two different days.

7363. They would have to be held on two different days ?—They are, as a matter of convenience, already held on two different days in nearly all Provinces.

7364. Otherwise the strain on the presiding officer would be heavy ?—Not only that, but it is just as well to keep the communities apart at election times.

7365. With regard to the special constituencies, you would have to take the word of the officials in some cases ; for instance, in the case of the Chamber of Commerce, that the list properly represented the members ; you could not check that, could you ?—You are talking now about the lists of the Chambers of Commerce ?

7366. I gave that as an instance, but there might, possibly, be other instances. It really arose out of something emanating from the Sub-Committee. It seemed to me that the membership fluctuated; that you might become a member very easily, and a member might go off at short notice, and so on. You would have to take the word of the officials in a case like that, that it was a proper list of their members?—Yes. In the case of the Chambers of Commerce there is always a printed and published list.

7367. There would be no revision of that list?—It would be revised every year.

7368. There would be no other authority to check it?—No.

7369. I think it was given in evidence by the Police witnesses that the first elections were likely to be extremely difficult from the point of view of order. Do you agree with that? Do you think they will be difficult?—I think in some places very likely they will be so.

7370. That is an additional reason, I think you have just said, for having the communities voting on different days?—I quite agree.

Major Cadogan.] The questions I desire to put are questions of policy, my Lord Chairman, so I will reserve them.

Sir Reginald Craddock.

7371. My Lord Chairman, I had one or two questions to ask the Secretary of State, which I will reserve, but I have a few questions to ask Sir John Kerr. In Bengal, Sir John Kerr, you have not a regular Land Record staff, have you?—No; not in the same sense as in other Provinces; but we have now completed the Record of Rights for the whole Province.

7372. But that is never kept up-to-date?—No; it is not kept up-to-date; but it is very useful for the purpose of reference on occasion of this kind.

7373. But it does not give you the names and holdings, and everything which is changed, so you have to have an independent agency?—In Bengal it is proposed to make the chaukidari tax the basis of the franchise.

7374. And you have got a special register for that?—We have got a special staff for it.

7375. Are you dependent upon the Zamindars for information?—No. The chaukidari tax is a tax that is put on by the village punchayets under the supervision of the sub-divisional authorities.

7376. Have you then no test of rent at all in Bengal?—Apart from the Record of Rights, there is none.

7377. But a part of the franchise is based, is it not, on the rent that a man pays?—Yes, at present; we have got road cess returns of course for them.

7378. The information about the rents is given by the Zamindars?—Yes.

7379. So that you are at a disadvantage as compared with those Provinces where the records are maintained annually?—Yes; but it is not proposed to make the rents the basis in the future. The chaukidari tax is going to be the basis.

7380. I say it will take the place of the rent qualification?—The chaukidari tax will, yes.

7381. Then as regards the Police, the idea I think was that about 1,000 votes could be recorded in a day at one polling station?—Not exactly that. It is 1,000 votes by one pair of clerks, and you would have three or four pairs of clerks at each polling station as a rule.

7382. Then you would want a good many police at each polling station?—Yes.

7383. How many did you agree there should be? Was it about five?—We have got an estimate of that in the Report. The U. P. estimated that the Police could deal with 25,000,000 electors, voting on one day.

7384. That would take up a very large proportion, of course?—Yes; but paragraph 27, on page 15, of the Franchise Committee Report discloses the information that we obtained in the U. P. "As a rule, one subordinate officer and four constables are necessary for each polling station."

7385. It was put to me at one time by some critic of this Report that with 36,000,000 votes to be recorded and 1,000 for each polling station, it would require



36,000 polling stations. If you multiply that by five, that would be 180,000, which would take up the entire Police Force of the country. But I gather that your calculations are based on a considerable modification of the numbers you have calculated for the U. P.—Yes. We went into the question, and got these abstract figures, and then we went into the question of the actual Police Force available, and we came to the conclusion that the Police could be distributed in such a way as to provide the necessary protection to the polling stations.

7386. Still, you said that 25,000,000 could be dealt with in what time?—In one day.

7387. That would be 1,000 at each polling station?—Yes, that would be 25,000 polling stations in that case.

Mr. Butler.

7388. Is it not true to say that if you increase the number of clerks you can increase the number to each polling station above the 1,000?—That is what would happen in actual practice, but, as a matter of mathematical theory, if you take 1,000 registered electors per polling station per day, then the police force of the country is sufficient to deal with 25,000,000 electors as a maximum per day. In many places, of course, you would have much more than the 1,000 electors.

Sir Reginald Craddock.

7389. You could not for that purpose reduce the number of polling stations without making the distance to be travelled rather great. Supposing you reduce the number of polling stations and added more clerks with the view of economising the number of police required, you would be pulled up very often by requiring the distance to the polling station to be greater?—In sparsely populated areas you would not even get 1,000 a day, but you would have to have the police there all the same. This is the average for the whole of India.

7390. I was putting to you that an election for a province will take up a great number of police?—Yes.

7391. In your experience of elections so far, can you tell me whether there

is any serious risk of the Midnapore experience being repeated, in which, you may remember perhaps, that Midnapore returned an illiterate sweeper as their member?—So did Chittagong, and so did Lahore, I believe.

Sir Reginald Craddock.] Is that likely to be repeated at all?

Mr. Zafrulla Khan.] What is the point of the question?

Sir Reginald Craddock : I am asking Sir John Kerr whether he thinks that the kind of thing which brought about the election of an illiterate sweeper for Midnapore is likely to recur again under the new constituencies?

Mr. Zafrulla Khan.] It is bound to recur where the depressed classes come in.

Sir Reginald Craddock.] I do not object to the sweeper, but the way in which he was returned.

Mr. Zafrulla Khan.

7392. What was the way?—I do not remember the Midnapore man, but the Chittagong man was a very intelligent one.

Sir Reginald Craddock.] He was returned by the fact that two candidates were put up, that is my information. One was a cobbler and one was a sweeper, and I do not think many voters wanted to vote for these candidates, and so, at the last moment, the cobbler was induced to resign, and the sweeper was declared elected without anybody having had to vote for the sweeper.

Mr. Zafrulla Khan.] What is the objection? I still cannot follow.

Mr. Rangaswami Iyenger.] I dare say there are many cobblers in this country.

Sir Tej Bahadur Sapru.

7393. Is not that the ultimate aim of democracy?—It is a question of policy for the Secretary of State.

Miss Pickford.

7394. Is it not the case that large as the constituencies are under the White Paper Proposals they will be smaller both for the Provincial Councils and for the Federal Assembly than they are under the existing Constitution?—Yes.

7395. Because the Federal Assembly are to have more seats, and the Provincial Councils will also have more?—Yes.

7396. Therefore it would be fair to say that the difficulties which exist to-day will be less and not greater under the White Paper proposals?—To some extent, yes. In the Provincial Councils the reduction will be very marked. In the Central Legislature the constituencies will still be very large.

7397. Arising out of the question that was asked by Major Attlee that it would be impossible to enlarge the franchise for the Federal Assembly because of the size of the constituencies, would it be fair to say that the difficulties are more geographical, and owing to the difficulty of communications, and it would be no more difficult for a candidate to get in touch with 100 electors in a village than with 10. By increasing the number of electors within a large constituency you do not really increase the difficulties of the candidate?—If you increase the number of electors ten-fold, I imagine that it would make a considerable difference, but in a constituency of 15,000 square miles it would not matter very much whether your electorate was 25,000 or 45,000 as far as contact was concerned.

7398. If you have to go to a number of villages it does not make very much difference whether you have to try to get in touch with 10, 20 or 30 voters?—No, I should think not.

7399. May I assume from the answer that the Secretary of State gave about the literacy qualification for women, that the proposal made by the Franchise Committee to enfranchise all literate women, has not been adopted, not for administrative difficulties, but because of the objection to a differential qualification?—I think the Secretary of State had better answer that question. I am not familiar with the recent discussions on the subject.

Miss Pickford.] I have another question arising out of that. I had better reserve that. Could Sir John Kerr tell the Committee from his experience, is it the fact that strict purdah is not very largely observed in the villages. It is more a custom in the towns.

Mr. Zafrulla Khan.] I think the Begum Shah can answer that better. That is correct.

Miss Pickford.

7400. It was an administrative argument that I wanted to bring out?—It is very hard to say. I think in an ordinary village, if an Englishman comes in the instinct of the women is to hide their faces and shuffle away in corners, and so forth, but what the conditions are actually when they are left to themselves I really should not like to say, but ceremonial purdah, as you might call it, is more observed in towns and villages where there are well-to-do people than in the ordinary rustic village where there is nobody very much above the cultivating class.

7401. The question I wanted to lead up to was this: Do you think that a large number of women would go veiled to the polling booths in the country districts?—Yes; I think they would hide their faces from the polling officers.

7402. But they would be prepared to remove the veil if there was a woman clerk in the polling station?—I should think so, certainly; if there was only a woman clerk.

7403. But if there was a separate compartment with a woman clerk then that administrative difficulty could be overcome?—Yes, I think so.

7404. And that in the towns would you agree that the evidence given before the Franchise Committee showed that it would be possible to provide separate polling stations for women in the large towns?—Yes, I think the evidence showed that.

7405. Therefore, that administrative difficulty could be got over in the large towns?—Yes, in the large towns.

Mr. Morgan Jones.

7406. Would Miss Pickford allow me to ask whether this difficulty was present at all in Ceylon and, if so, has it been overcome?—In Ceylon they have a much larger staff of women available to assist at the polls than there is in India and they get over the difficulty in that way.

Sir Tej Bahadur Sapru.] There is practically no purdah in Ceylon among the Hindus.

Chairman.

7407. Is purdah an institution in Ceylon to any great extent?—Only

among the Muhammadans I think in Ceylon. I am not very familiar with it.

Mr. Mr. R. Jayaker.] The same is the case in India. There are many districts where there is no purdah at all.

Sir Tej Bahadur Sapru.] Bombay and Madras.

Begum Shah, Nawaz.

7408. Would Sir John tell us what would be the percentage of purdah among the women of India? How many women are in purdah? Have you ever considered that question?—It differs very much in different Provinces, and I should not like to give a mathematical answer to questions of that kind.

Begum Shah Nawaz.] There is very little purdah among the Hindu community; purdah is more or less confined to the upper classes amongst the Muslims, is it not, and mostly to the upper classes among the Sikh zamindars? There are 50 million Muslims in the whole of India, 40 million adults; there are more men than women. The number of women would be roughly 17 million. Out of that, 90 per cent. happens to be agricultural population and most of the women who live in these villages go and work in the fields with their own men, out of those 17 million. Therefore, out of 165,000,000 women there could not be more than 12,000,000 or 13,000,000 women in purdah.

*(The Witnesses are directed to withdraw.)*

Ordered, That this Committee be adjourned to 10-30 a.m. to-morrow.

21st July 1933.

Present :

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Reading.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.  
Major Attlee.

Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Coeks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaqat Hayat-Khan.  
Sir Akbar Hydari.  
Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
Sir P. Pattani.  
Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Sir C. P. Ramaswami Aiyar.  
 Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. Rangaswami Iyenger.  
 Mr. M. R. Jayaker.  
 Mr. H. M. Joshi.  
 Begum Shah Nawaz.

Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Tej Bahadur Sapru.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Sir N. N. Sircar.  
 Sir Purshotamdas Thakurdas.  
 Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt. G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., Sir MALCOLM INDLATER STEWART, K.C.B., K.C.I.E., C.S.I., and Sir JOHN HENRY KERR, K.C.S.I., K.C.I.E., are further examined.

Marquess of *Lothian*.

7409. I have only one question to ask you, Secretary of State, as you left in the middle of my questions. It is on the question of the reason why you propose that the wives should only have the vote on application to be put on the roll. As I understand it, it is not the technical difficulty of placing the names on the roll, so far as numbers are concerned, because the husbands are already on the roll, and it is clearly easy, other things being equal, to put the wives on?—(Sir *Samuel Hoare*.) No, I would not altogether agree with that deduction. We are informed that, at any rate in certain Provinces, it now creates great difficulty; husbands will resent particulars being asked about their wives.

7410. The real objection is that certain husbands will object to having their wives put on?—That is one of two objections, the other being the numbers.

7411. You provide for 5,000,000 women voters, and, if all the wives are put on, it might raise it to 6,000,000. Is the difference between 5,000,000 and 6,000,000 a decisive administrative objection?—The general view of the Provincial Governments is that the machine will be severely strained at the first election with the full numbers suggested by Lord *Lothian's* Committee. We have, therefore, been impressed by the proposals that have been made that would leave the scheme intact, but would enable less pressure to be put upon it for the first election or two.

7412. May I just ask one other question: Do you think it would be possible

for you to circulate to this Committee in the Autumn a statement of the area, population, and the number of constituencies in Canada and Australia for the purposes of comparison, because my investigations lead me to the conclusion that the average size of the Canadian constituencies is 9,000 square miles, and in Australia is 30 square miles for the Lower House, and 60,000 square miles for the Upper House. We had better get the actual figures clearly before us in the Autumn. Could you do that?—I suggest, my Lord Chairman, that the proper course would be for you, if you would, to ask the Dominions Office to send particulars of that kind.

*Chairman.*] Very well.

Sir *Tej Bahadur Sapru*.

7413. May I just put one question to clear up a point made by Lord *Lothian*? What is the nature of the objection which has been suggested to you about husbands, about giving details about their wives in India? Has it been suggested to you that they will object to giving the names?—It is suggested that in certain cases they will object to giving any particulars at all.

7414. I am very doubtful as to whether that is so, or not?—Perhaps, Sir *Malcolm Hailey* will put the case.

7415. May I put before you the Indian point of view? So far as, say, the Orthodox Hindus among the villages are concerned, there is a sort of prejudice in mentioning the name of the wife, but that prejudice does not obtain among the Muhammadans. If a husband is unwilling to give the name of

the wife, there are other members of the family who can give it. The real objection, to my mind, is that the women of India really have serious objection to giving information to any official, and I suggest to you that the position being that women must apply it is really going to result in a very substantial reduction in the representation of women?—We have had cases to the contrary in some number brought to our attention, cases of male electors refusing to give the names of their wives, and again cases in which it has been found particularly difficult to persuade either the women or their male relatives to give their names to the persons preparing the rolls. Perhaps Sir Malcolm, from his experience, would add a word to my answer.

Mr. *Zafrulla Khan*.] I venture to submit that in the North-West Frontier Province it would not be free from danger for an officer to go and make such inquiries.

Begum *Shah Nawaz*.] May I ask Sir Malcolm Hailey a question? Is it the fact that except in the Punjab and the North-West Frontier Province, Muslim women hold property in almost all the other Provinces, and their names are already on the registers?

Sir *Hari Singh Gour*.

7416. May I add to what Begum Shah Nawaz has said that for a municipal franchise where there is adult franchise, as in many urban municipalities, the names of women are already borne on the electoral roll?—(Sir *Malcolm Hailey*.) What I should say to the Committee is the result of our experiences in the United Provinces in making a test electoral roll on the new franchise in certain selected areas. They were so selected as to be more or less illustrative of what we might expect to find when we came to prepare the full electoral roll afterwards. We found that in the towns there was no great difficulty, and that particularly was the case among the working-classes and such classes as the Scheduled Classes. In the villages results differed, one very enthusiastic officer going personally (he was an Indian officer), did manage to get the names of a number of women on his roll, but there were other cases in which the Agents employed, men of the

Revenue Accountant type, village Accountant type, were driven out of the village, and I got many complaints, that if this course of things was to be pursued there would be very serious danger to them. So that there was positive evidence of the real difficulty in drawing up a roll, at all events, in the local areas. I am quite convinced of the truth of Mr. *Zafrulla Khan*'s observation about the North-West Frontier Province.

Mr. *Zafrulla Khan*.

7417. Quite?—There are certain parts of the North West parts of the Punjab where I think the same conditions would apply as in the North West Frontier Province. They are, of course, almost purely Muhammadans. There would be very little difficulty, I think, in the case of the Sikh population, because the women there have been voting in what we know as the Gurdwara Elections. I have my own experience, of course, and I wish purely to speak of the results of that experience which is confined to the Punjab and the United Provinces. I am sure there would be, for the first election, at all events, until people know how very harmless was the nature of our inquiries, very considerable difficulty in many of our local constituencies. That difficulty would apply to all the fairly well placed agricultural classes; it would not apply in the same sense to the Scheduled Castes; but I want to make, if I may, one general observation to the Committee. The preparation of a roll of this extent can only be carried through as part of our ordinary official procedure. That is to say, the vast bulk of our electors will be from the rural areas. Now in the greater part of India we have a Land Registration system, which gives you the names of all persons owning or cultivating land. All that we do is to get our Revenue Agency to work and they make an extract from those Registers, which gives you a Roll that is practically complete in itself. No inquiries are really necessary for that purpose; it can be prepared by the village Accountant Staff under the supervision of what we know as the Tehsildar with very fair completeness without any inquiry at all, being checked in the village, but that is in itself a comparatively simple operation, and it is owing to the existence of these

records that we are enabled to prepare what is in effect a very accurate Roll, without any great disturbance of our ordinary official work, and at no very great cost. If we are to make an elaborate system of inquiries in the villages, then the burden of preparing the Roll will be immensely increased. It will occupy the time of men who are really required in urgent work connected with the village records and the collection of Land Revenue, and of their supervising staff. That is one reason why the Local Governments have found so much objection in the proposal to add a very large number of women whose names can only be ascertained as a result of personal inquiry, in the first instance. I think we, many of us, contemplated that when matters settled down and people understood the meaning of the vote, the difficulty might not occur afterwards; and I think I am right in saying that our objections applied really to the initial procedure of the First Roll.

Dr. B. R. Ambedkar.

7418. Do I understand that he would not require any application at the Second Election?—As the Secretary of State has said, I would leave that largely to circumstances. If it were found that the Second Roll could be undertaken without any very great difficulty, I think you may be quite sure that the Local Governments would do their very best to make the change and prepare a Roll of women without the Application procedure.

[Sir C. P. Ramaswami Aiyar.] My Lord Chairman, I can speak with some little experience of the election because I was in charge of a legislative election for the Legislative Chamber in Madras. I may say that speaking for the South of India, while there is no Purdah system in force to the same extent as there is in the North, and while, moreover, it must be recognised that there is some prejudice on the part of the husband to give the name of the wife, and on the part of the wife to give the name of the husband, nevertheless, there will be very little difficulty in compiling a Register, so far as that part of the country is concerned. At the same time, there will be considerable difficulty in exacting applications from women; they

would not normally apply. I would, therefore, suggest for the consideration of the Secretary of State and the authorities that there should be these two systems applied side by side: that where it is possible either from Revenue Registers or otherwise to get the names of the women or where it is possible by inquiries to get those names without any trouble, then that method should be resorted to side by side with the method of application. To resort suddenly to application or to insist upon it, as a *sine qua non* of entry on the Register, would lead to difficulties even in a Province like Madras where there is no seclusion of the Purdah system in force.

Sir Manubhai N. Mehta.

7419. May I inquire if these objections are not present, and also overcome at the time of the census enumeration?—(Sir Samuel Hoare.) I think, my Lord Chairman, obviously, we ought to take into account such a suggestion as has been made by Sir C. P. Ramaswami Aiyar. At the same time, the Committee and the Delegates should know that the view that he has just expressed is not, so far as I can remember, the view that has been expressed by the Government of Madras. The Government of Madras have very definitely taken the view that for the First Election or two, the women's vote should be upon application.

Mr. M. R. Jayaker.

7420. Can the Secretary of State say what is the view of the Bombay Government and the Central Provinces Government in this behalf?—The same; I think also on application.

Sir Reginald Craddock.

7421. Would the application from the husband that his wife's name might be recorded, suffice?—It would be the application of the voter.

7422. That is to say, of the wife?—Of the wife, yes.

[Mr. M. R. Jayaker.] But would you not substitute the husband's application on his wife's behalf?—That is a point we ought to consider.

7423. Has this application to be by letter or in person?—we have not formed

any definite view about it. We would make it as easy as possible ; we should certainly do that.

7424. It will ease the situation, to some extent, if you allow the husband to apply on behalf of his wife. I am only making a suggestion for your consideration ?—I think that is a suggestion which we ought certainly to take into serious account.

*Sir Hari Singh Gour.*

7425. In view of the discussion which has proceeded upon the subject, would the Secretary of State be pleased to give an undertaking to the Committee that he will re-examine the whole question, and see if a *via media* cannot be found with the view to bringing upon the Register as many women as can be brought without detriment to the objection which has been raised, and in Provinces where such objection is not of primary importance, a serious effort should be made to bring women on the Electoral Roll ?—I should think that not only I, but all Members of the Committee, would wish to keep an open mind upon the suggestions that have been made this morning ; some of them may prove to be very valuable. I have put before the Committee the reasons that have prompted us to make the proposals in the White Paper. I still think they are the best, but in a matter of this kind, obviously, one must take into account suggestions that are made, as they have been made this morning.

*Sir Tej Bahadur Sapru.*] May I make a suggestion to Sir Samuel Hoare and the Committee, that perhaps it would be best to leave a latitude to the Local Government to do as occasion requires or as the situation in the Province requires. What I am suggesting is, you need not have a hard and fast rule insisting upon application everywhere and under all circumstances. I should leave it to the Governor of the Province to decide, according to the situation, and according to the need of his own Province.

*Begum Shah Nawaz.*] May I be permitted to say that we strongly object to this ?—We want the British Government to give their decision upon this question.

*Marquess of Salisbury.*

7426. I am very diffident to say anything upon the matter of this

kind, but I hope the Secretary of State remembers that the application of nearly all these women will have to be personally, because the great body of them are illiterate ; so, if the application is to be by the woman herself, she will have to attend to apply ?—Yes, and it was keeping that kind of fact in mind that made me take particular note of what Mr. Jayaker said as to the possibility of the husband applying.

*Chairman.*] I suggest that the Committee might wish to pass to other matters now. It seems to me that the Secretary of State has in mind, and I am sure the whole Committee will bear it in mind when the time comes.

*Lord Rankeillour.*

7427. Secretary of State, does it not follow from what has just passed, that if you once depart from the property qualification the task of compiling the roll, whether for men or for women, will be very much more difficult ?—Yes.

7428. And the estimates of cost have been based on the property qualification being taken ?—No ; the estimates of cost have been based upon the whole scheme.

7429. But under the assumption that the roll was compiled on the present basis of the existing Land Registers ?—Taking into account the other qualifications as well.

*Major Cadogan.*

7430. My Lord Chairman, the Secretary of State has been so patient that I hesitate to return to a subject on which he has already answered so many questions, but I want to ask one question on the comparative merits of direct and indirect election. You have admitted that there are most formidable objections to both, but you will also admit that responsibility is the very essence of your scheme, at the Centre (*a sine qua non*) and responsibility means not only responsibility of the Executive to the Legislature, but the responsibility of a Member to his constituents. In view of the remarkable figures that Sir Malcolm Hailey read out, I think in response to Lord Zetland's request, on the size of the constituencies, might I draw your attention to a passage which has not yet been

quoted in the Simon Commission Report on page 117 of Volume II—"Under the plan which we propose the representative at the Centre will know that his actions will be subject to the criticism of a body of provincial legislators and the result will, we believe, be the creation of an enhanced sense of responsibility in the member". Do you agree with that being one of the advantages of indirect election?—Yes, I should certainly say it was one of the advantages of indirect election.

7431. The other question I want to ask (I hope I shall not be encroaching upon a question which is taboo) is that I would remind the Secretary of State that a feature of the Simon Commission proposal for indirect election upon which they laid very great stress and emphasis (I do not know if the Round Table Conference considered it) was the fact that we proposed the use by the Provincial Councils of proportional representation, and one of the advantages of this, it was pointed out, was that you would obviate the separate communal representation in the Assembly. Do not you think that can also be put into the balance in favour of indirect election?—So much do we think that that we are adopting proportional representation from the Councils as the method of representation in the Second Chamber.

*Sir Austen Chamberlain.*

7432. May I put one question to the Secretary of State on the same passage, the words immediately preceding those read by Major Cadogan? The Simon Commission say: "All the evidence goes to show that at present the actions of a member in the Assembly are not, and in the nature of things cannot be, subject to any real control on the part of his constituents." Do you see any reason to differ from that statement?—I do not think that I should feel competent either to accept it or reject it. I have found that a great many of our Indian colleagues take a different view. One has got to take the opinion into account of men who are actually sitting for some of these very large constituencies.

*Miss Pickford.*

7433. May I ask the Secretary of State one or two questions as to the women,

which have not been touched upon. May I assume from his answer to Lord Lothian yesterday that the reason why the literacy qualification for women recommended by the Franchise Committee has not been incorporated in the White Paper is objections to a differential qualification rather than administrative objections?—It is more than a single reason. First of all, we have found it difficult to defend an educational qualification that is different for the two sexes. A very formidable argument can be urged against differentiation upon grounds of theory, but, over and above that objection, there is the administrative objection. We did find that it was the view of the Provincial Governments that conditions very much varied. For instance, they might have educational particulars of a certain kind about women in one province, and they had not them in another, and so on, a number of other more detailed administrative difficulties that no doubt Sir John Kerr and Sir Malcolm Hailey could describe at greater length. It was, therefore, those two reasons that prompted us to make the proposed change in the Lothian recommendations.

7434. Would it be fair to assume that the administrative objections cannot be very great in view of the fact that Madras is willing to have a literacy qualification for both men and women, and that in Bombay and the Punjab a literacy qualification is recommended for the scheduled classes?—So far as I can remember off-hand Madras preferred a literacy qualification because they had particulars about literacy available, and they did not have so readily available particulars about other educational qualifications. So was it also in Bombay. Bombay, so far as I can remember, took the view that their available data was data connected with matriculation, and they found it difficult to apply other tests. I think those two examples show the difficulties of applying a qualification of this kind when in one province the educational particulars that you have got deal with literacy; in another province they deal with matriculation. (*Sir John Kerr.*) That is correct.

7435. I think it is the case, is it not, that the matriculation qualification will be kept as well for those who do not belong to the scheduled castes?—(*Sir*



*John Kerr.*) The difficulty about application is, I think, that it will throw a very serious obstacle in the way of the preparation of these electoral rolls. As Sir Malcolm Hailey has just said, the information about the men is available in the Registers, and you can get several hundred men's names into the roll in a day, but, if you are going to have these applications alleging literacy, and you are going to have objections saying that they are not properly authenticated, then you are going to have disputes and appeals, and things of that kind, it is going to delay the preparation of the initial roll very greatly, and what the Local Governments feel, I think, is that this would put an unbearable strain upon the administrative machine to have to go into those comparatively small questions regarding individuals at a time when their whole energies will be strained in getting the roll ready.

Sir A. P. Patro.

7436. May I ask a supplementary question? In Madras the qualification is: "Literacy (i.e., ability to read and write in any language) certified by village officers in certificates to be countersigned by the Tahsildars, or alternatively, the holding of the Elementary School Certificate issued by the headmaster of a school recognised by the Government." Similarly in Bombay. On page 105 of the White Paper it says: "Having passed the examination for the matriculation or the school leaving certificate, or an examination accepted by the Local Government as the equivalent thereof." In Bombay, and the Central Provinces by setting up the standard of matriculation you keep out a large number of useful voters, and you give preference, or place a premium on urban voters and keep out the rural voters. On the other hand, in Bombay, you have what is known as the vernacular upper primary examination, and, similarly, in the Central Provinces, you have got upper primary examinations. Local Governments should not find any difficulty in recognising these two as a standard for women as it is so in Madras, where you have said that literacy certified by the village officers' certificate is quite sufficient, or, alternatively, the headmaster of a recognised school. I do not see, administratively or otherwise, any

difficulty in placing a similar standard of qualification in regard to women in Bombay Presidency and in the Central Provinces?—I would say in regard to that, Madras is admittedly the most advanced province in India in regard to all sorts of electoral arrangements. They have had this system of elections to local bodies in force for many years, and it is on that system that they propose to base the franchise for the Councils. They are therefore in a very much better position than any other province to make arrangements for the women, because they are already on the electoral roll for local bodies under the qualifications which have just been read out.

7437. May I suggest that there is a recognized standard of vernacular education such as is shown by the vernacular Upper Primary Examination in Bombay and the Central Provinces? Why not accept that as in Madras?—As far as I remember, Bombay said that their educational records were not such as could be readily applied to the preparation of an electoral roll. The educational records have not been prepared with that object in view. In future, for future generations of girls or women it will be a comparatively simple matter to adapt your educational registers and returns for electoral purposes, but in Provinces where that has not been done hitherto there will be very considerable difficulty in doing it for the first election.

7438. Would there be any difficulty in asking the Governments of Bombay and the Central Provinces to reconsider this question, because I have had information from the Ministers of Education in Bombay and the Central Provinces that there is a real standard of vernacular primary education available in all schools?—The question is whether the records are available in time to be used for the first election.

7439. I understand that the records are available both in the Directors' office as well as in the office of the Inspector of Schools?—(Sir Samuel Hoare.) We can only take the view of the Government of Bombay expressed to us after a long series of communications and questions.

7440. May I submit that this will help only to bring in the urban city voters,

and you will exclude all the rural population, the agricultural population, and labouring population coming in to the electoral rolls. Your rolls will hereafter be limited only to women in the cities and towns where there are educated people; but in the rural areas of these two Provinces you will not get any women coming into the roll?—(Sir *John Kerr*.) One of the arguments used by the Government of Bombay was that if the educational qualification was reduced below the matriculation standard it would increase the urban-rural disparity which is already serious in Bombay and which it has not been possible to rectify to the same extent as in other Provinces, because more women in the towns would conform to what has been called the Upper Primary standard than in the country. There are not schools in the villages with records to the same extent as there are in the towns.

*Begum Shah Nawaz.*

7441. If the qualification of literacy only were accepted, would not that solve the problem?—Apparently not in Bombay, because in Bombay the educational facilities in the towns are very much greater than they are in the villages.

*Begum Shah Nawaz.*] Is not it a fact that in most of these villages, whether in Muslim families or in Hindu families, the women learn to read from books in their own homes?

*Sir A. P. Patro.*

7442. Would it not be better to apply the literacy standard?—(Sir *Malcolm Hailey*.) I think I would rather take the word of the Begum Sahiba for that. I have seen something of the girls in the towns and villages, but I am not likely to be as good an authority on the subject as she is.

*Begum Shah Nawaz.*

7443. May I ask if the Franchise Committee did not take into consideration all these endless difficulties when they went out to India?—(Sir *John Kerr*.) We took them into consideration as far as we could, but it is the local Government who knows where the shoe pinches.

*Sir Hari Singh Gour.*

7444. Did they not tell you where the shoe pinches when you were making inquiries?—I think I am correct in saying we proposed a more liberal franchise in the case of women than any local government was prepared to accept when we were in India.

*Begum Shah Nawaz.*

7445. Are there any women in these local governments, or are there only men in the local governments?—(Sir *Malcolm Hailey*.) One of the weaknesses of our local government system is that it contains no ladies at present.

*Miss Pickford.*

7446. May I draw the attention of the Secretary of State to page 12 of the White Paper proposals, in which it is pointed out that the ratio of men to women voters will remain as at present in the neighbourhood of 2 men to one woman; and where it is stated that His Majesty's Government fully appreciate the importance of a large women's electorate for the Federal Assembly? May I take it from that that His Majesty's Government are still open to suggestions for increasing the women's franchise for the Federal Assembly?—(Sir *Samuel Hoare*.) I did not quite catch the end of the question.

7447. Does His Majesty's Government fully appreciate the importance of a large women's electorate for the Federal Assembly?—Yes.

7448. May we assume from that that His Majesty's Government and the Secretary of State are still open to practical suggestions for increasing the women's electorate?—I am nervous upon administrative grounds of an increase in the first election. I am most anxious that, supposing proposals of this kind are embodied in an Act, the first elections should work smoothly and I have to take into account the warnings that have come from I think every Provincial Government against straining the machine too severely at the first election.

7449. Would you agree that to leave the ratio at 20 to one is contrary to the terms of reference embodied in the Prime Minister's letter to the Franchise Committee, to pay special attention to

the women's vote and to diminish this grave disparity which now exists?—No, I do not think I would admit that. I would say, first of all, special attention has been given to this question, and I would say, secondly, that we must keep in mind the fact that under our proposals we are assuring nine special seats for women at the Federal Centre. That will go some way at any rate to lessen the disparity of the figures which Miss Pickford has just quoted, and I would add this further observation, too, to my answer: It must be remembered that, apart from these questions of percentages, we are increasing the women's vote for the Federal Centre I think almost tenfold.

*Begum Shah Nawaz.*

7450. What about the ratio—the proportion?—I said particularly, “apart from the percentage.”

7451. May I call the Secretary of State's attention to page 94, the last few lines of the third paragraph? What he has said in reply to Miss Pickford's questions: Does it mean that they are not going to consider further the question of lessening this disparity in the proportion of one to 20?—I am not quite sure what the Begum's question means. Obviously, neither with this question nor with any other in the White Paper has the last word been said. We are here to consider these questions just as we are here to consider every one of the proposals in the White Paper. This proposal does not differ in any way from the other proposals we have included in the White Paper.

7452. But almost the promise is given in these last few lines on page 94, that further consideration of the above arrangements may be necessary. It means that women in India understood from this that it was the intention of His Majesty's Government further to consider this question and try to lessen the disparity in proportion of 1 to 20?—Those are just the kind of questions we are considering this morning. I have given my views for the proposals in the White Paper, and I have been taking note of all these other suggestions that have been made in one direction or another during our discussion.

*Mr. M. R. Jayaker.*

7453. May I know, Sir Samuel Hoare, whether after the evidence of the Indian Women's Organisation, about which my Lord Chairman is not in a position to state anything, if the Committee have the benefit of hearing that evidence, you will reconsider the position of the Women's Vote once more in the light of the evidence the Indian women give, if they give evidence at all?—I really cannot differentiate this case from any other case. Here we are in a process of discussion about the White Paper proposals, and, obviously, it would not be true to say that our minds are rigidly closed against any suggestions. We are here to receive suggestions and to consider them.

*Miss Pickford.*

7454. Without, of course, calling in question the Communal Award, may I call the Secretary of State's attention to the distribution of seats for the women, both in the Provincial Councils and in the Federal Assembly. I note that Bengal, with a population of 50,000,000, has five seats reserved for women in the Provincial Council, and one in the Federal Assembly, and that Bombay, with a population, without Sind, of 18,000,000, has six seats in the Provincial Council and two in the Federal Assembly. May I ask on what principle that was suggested?—Miss Pickford is really raising the Government's communal decision. The communal question, of course, as she knows, does enter into the question of these women's seats very definitely.

*Begum Shah Nawaz.*

7455. Are we barred from the Communal question?—It is very difficult to say either yes or no to that question. I think I would say that you cannot leave the Communal question out of account. If you leave it out of account, you must invalidate your general communal decision in a Province by the kind of representation that was given to the women in the special seats.

*Miss Pickford.*

7456. That would hardly apply, would it, in the Federal Assembly, whereby Madras and Bombay have two women's seats and Bengal has one?—I can only

say with these special seats, we took an immense amount of trouble in balancing the various claims, and, putting one thing with another, we thought this was a fair plan.

Miss *Pickford*.] Then the smaller Provinces, Assam, North-West Frontier Province, Sind and Orissa, are left without any representation for the women at the Centre at all. Would it be possible to consider a scheme whereby the smaller Provinces could be represented at alternate elections rather than to deny them for ever any representation at the Centre.

Begum *Shah Nawaz*.

7457. And also the women of the two new Provinces, Orissa and Sind, must have their representations at the Centre ?—I can see considerable difficulty in the way of altering these figures, but, off-hand, I would say that I would take into account the suggestion Miss *Pickford* has made, and think it over.

Miss *Pickford*.] Thank you.

Marquess of *Zetland*.

7458. My Lord Chairman, may I just ask one question—it is only for information. I am not quite sure—would a woman be entitled to stand for a general constituency ?—Yes.

*Chairman*.] With the courtesy of Sir Akbar Hydari, whose turn it is now, I am going to ask Sir Nripendra Sircar to put some questions.

Sir *N. N. Sircar*.

7459. My Lord Chairman, I think the Secretary of State has been informed that I sent certain figures to the India Office to be checked, to find out whether my figures were right or wrong ? Is that not so ?—Yes ; we have had some figures sent to us by Sir Nripendra Sircar.

Sir *N. N. Sircar*.] I understand that some of the figures have been checked (I am making no grievance or complaint about it), and others have not been checked in the office.

Marquess of *Zetland*.] Could we be informed to what these figures refer ?

Sir *N. N. Sircar*.

7460. I am putting that in my question now ?—I am informed that figures have

been checked, so far as we have been able to do so.

7461. My question is this : In the arrangement for seats for the Provinces, coming to Bengal, we know there is no allocation for Hindus, as such, but they come under the word "general", which in Bengal practically means Hindus. Is that not so ?—Yes.

7462. Now using the word general in that sense, in the sense in which it is used in the White Paper, that, I understand, as meaning everyone, except Muslims, Indian Christians and Anglo-Indians and Europeans. Is this fact correct. The proportion of the total population of all ages is 54.9 for Muslims, and 44.8 for the general constituencies ?—Yes.

7463. If you come to adults, if you take ages over 20, is it correct that the proportion of Muslims to Hindus is 51:7 as against 48 ?—Yes.

7464. I do not know if your office has had time to check it, but in the census of 1931; I have got it here, Volume V, Part I, page 121, while the age groups are given in a summarised form, does it appear that between the ages of zero and 10, there is a predominance of Muslims over Hindus to the extent of 55 per cent., and there are 3,000,000 and a little more of Muhammadans between the ages of zero and 10. You have not checked that ?—No. We have not been able to check these figures in detail.

Mr. *Zafrulla Khan*.] I have not the slightest objection to any questions that Sir Nripendra Sircar wishes to ask the Secretary of State on these points, and to press them in whatever detail he desires, but I do hope that if there is a similar attempt on this side, subsequently, to meet those points and to raise those points, the Committee and yourself will not complain that undue time is being taken up over the consideration of these matters.

*Chairman*.] That is quite understood.

Sir *N. N. Sircar*.

7465. Now is it correct that the total number of seats for the Bengal Legislature is 250 (I am talking of the Lower House), and out of it 31 seats cannot be touched either by Hindus or by Muslims, 25 for Europeans, 4 Anglo-Indians and 2

for Indian Christians. Is that not so ?  
—Yes.

7466. And I think you will agree that 31 seats out of 250 are taken up by Europeans, Anglo-Indians and Indian Christians, who between themselves, the three together form less than  $\frac{1}{2}$  per cent. of the population and take up 31 seats. I am not complaining at all, but is it the fact ?—Put numerically, it is the fact, but Sir Nripendra Sircar has just admitted it is not principally the numerical fact that we have taken into account.

7467. No. I have made it perfectly clear that I am not complaining about it ; I only want to get the facts put in a very short form before the Committee. Is it the fact that if the 199 ordinary seats, those of the seats which are to be divided between the general and the Muslims, are divided according to the ratio of the adult population which I have quoted to you, that then the result would be 103 Muslim seats and 96 general seats ?—If they were divided in accordance with the adult population figure, did you say ?

7468. Yes ?—103 and 96 ; I think that is so.

7469. If they are divided according to the total population ratio, which your officers have agreed is 54.9 to 48, then there should be 109 Muslim seats and 90 general seats ?—Yes.

7470. What has been awarded is 119 plus such seats as they can get out of the 20 special seats. What has been awarded to the Muslims is 119 seats plus such seats as they can get out of the 20 special seats ?—Yes.

7471. May I draw your attention to the Volume which you have been kind enough to distribute to Members of the Committee and the Delegates, "Despatches from Provincial Governments in India containing proposals for Constitutional Reform." I am drawing your attention to page 59 of Command 3712 ?—What I am not quite clear about is, it is the opinions of the Provincial Governments, on what ?

7472. On the Statutory Commission. If you would be so good as to look further on page 59, I am putting it as shortly as possible, the European Members of the Bengal Government say this : "After careful consideration of rival schemes,

they have come to the conclusion that representation on the basis of population is the fairest method of distributing the seats in the general constituencies between the Muhammadans and non-Muhammadans, and they consider that any weightage which is to be given to the non-Muhammadans in respect of wealth, education or position, should be allowed for in the special and not in the general constituencies." If this opinion had been followed, what was considered to be fair by the European Members of the Bengal Government, then the 20 special seats would be left to take their own course, being liable to be captured by the Hindus, but the other 199 seats would be divided according to the population basis. I want to know, have you followed that principle in the communal decision ?—I am not going to argue about the communal decision at all. I have made my position quite clear in the Memorandum. We did not wish to make the decision ; it was forced upon us by all the communities in India ; we did it with great reluctance. We took into account, of course, the Report of the Statutory Commission ; we took into account every conceivable other kind of investigation and we had in every case the very full reports from the Provincial Governments.

7473. May I take up that point before the Committee ? Is it not the fact that you have been forced to make the decision because the parties could not agree in spite of their endeavours to settle the dispute ?—Yes.

7474. And is it not the fact that when from the Delhi Consultative Committee the telegram was sent to the Government to come to a decision in the Proceedings, it was made perfectly clear, particularly by the Muslim Members, that there is no question of arbitration, no question of award, and the matter will be open to challenge, if the decision went against any particular party. Was not that the position ?—I am not sure whether any community ever said they will accept the decision or not when it was given. What I am quite sure about is that the communities failed to agree amongst themselves, and they then made it clear that the Government must give a decision. That decision we have given.

7475. I quite agree there ; I will not pursue that point. There has been a

Government decision—that I realise—but would it be correct to say, that so far as this Committee is concerned, it is quite open to them to inquire whether an injustice has been done to a community in Bengal?—I could not in any way restrict the activities of the Committee. I shall take no part in those discussions at all, nor will any Member of the Government.

7476. Do I understand your position to be this: you were compelled to a decision. When I say you, Sir Samuel, I mean the British Government. The British Government was compelled to give a decision, because the parties could not agree, and in that decision they stated: "This is our final decision, so far as we are concerned. We cannot allow the Conferences to be held up, because you are fighting between yourselves?"—Yes.

7477. Having done that, you have carried out your undertaking and put that decision as part of the White Paper proposals?—Yes.

7478. When it has become a part of the White Paper proposals, these White Paper proposals, whether they are the result of complete agreement between parties or substantial agreement between parties, or because you had to come to some decision because they hopelessly failed to agree, for the purposes of this Committee and for the purposes of Parliament do they not stand on the same footing. They are proposals, every word of them being a proposal in the White Paper?—They are proposals that differ in this respect from the other proposals in the White Paper, namely, that upon those proposals the Government have said their last word.

7479. I quite appreciate that so far as the Government is concerned, this is the last word. They cannot say: "We are going back upon the decision." I am not looking at the Government point of view. I am looking at the point of view of a party who is applying for justice to the Joint Committee and to Parliament. This communal decision is part and parcel of the White Paper proposals, like others?—I have just drawn attention to the fact in which it differs from the other proposals.

7480. I cannot argue further with you, Sir Samuel Hoare. The difference

is so far as the Government is concerned. What is the difference, if you are pleased to answer it—if not, you will not, so far as the Joint Committee and Parliament are concerned, because in the one case you had to come to a decision because parties failed to agree, and, in another case, you came to a decision because parties substantially agreed?—I think that is essentially a question that the Committee must decide. My own view is that it does differ substantially from the other questions in the White Paper, first of all, because the Government has said its last word upon these proposals; secondly, my own view, for what it is worth, is that if we reopen it here, this Committee will never come to an end, and there will never be any Constitutional proposals for India at all.

7481. May I deal with that bogey, that this Committee will never come to an end? If I put up this proposition for you for your consideration perhaps you will change your answer. I am limiting myself to Bengal. So far as the Bengal proposals are concerned, as they are to be found on page 93 of the White Paper proposals, supposing the Committee is not asked to disturb any of the questions decided, for instance, what you say is the principal question, whether there is going to be a special electorate for certain communities: the number of seats given to Labour, the number of seats given to the Universities, to landholders, to Europeans, to Anglo-Indians, to Christians, and various other things which are decided. One party appeals to the Joint Committee in this way. It says: "Keep all of them. We do not want to disturb anything; but there is no reason why, while you are dividing the ordinary seats between the Hindus and Muhammadans, you would not spare five minutes of your time to work out the proper quotas?"—My own view is that if the Committee wishes to re-open this aspect of the problem they will re-open the whole of the communal question, and that is quite impossible in practice to re-open the questions on the lines suggested by Sir N. N. Sircar.

7482. Will you be pleased to state why it is impossible, if the other questions are not open, and if you do not go into the question of the number of

Labour seats that are wanted?—I am pretty sure—I do not know whether the Indian Delegates will support me in this view—if we said that the communal position was open for discussion we should either talk about nothing else for the rest of our deliberations here, or three out of four of the Indian Delegates would say that they could not go on discussing anything at all until the communal decision had been given once again.

7483. May I point out to Sir Samuel that in spite of that (I am not suggesting the whole of the communal award should be re-opened and that these matters should be discussed endlessly before the Committee and that their time should be taken up) as a matter of fact you are actually examining witnesses on these questions, are you not?—To some extent we are. My own view would have been that it would have been better not even to go to that extent, but there were certain distinguished Indian gentlemen over here, and I think there was a good deal to be said for letting them come and make their case, even though it is accepted anyhow by the Government that the communal decision is not, at any rate so far as they are concerned, open for discussion.

7484. I quite appreciate the Government position, as I have said more than once, but there would be no sense in inviting witnesses to come here for the purpose of agreeing if it has been settled already that this question is not to be gone into at all?—I am giving my view as the Secretary of State for India. What view the Committee take ultimately about it is for the Committee to decide. I will give the Committee what advice I can upon the subject, and my advice will be against re-opening the question; but it is for them to decide whether they will take that advice or not.

7485. I shall ask you one more question about the ratio, and I then come to another question. Having regard to the figures which you have been good enough to admit (I am not going to repeat the figures of percentages and so on over again) there is no doubt on those figures that one Community has got sixteen seats more than their pro-

portion of the population or any other consideration would justify?—I should not admit that conclusion at all.

7486. I will not argue with you, Sir Samuel Hoare, but I thought that followed from your last answer, when you said, according to the proportion of population, taking even the total population, not the adult population, there should be 90 general seats and 109 Muslim seats?—It was a consideration to be taken into account. I do not say it was the only consideration. We had to take many considerations into account and that was not the only one we took into account.

7487. May I point out that every consideration which has been shown in the other cases has been denied to the Hindus? Take, for instance, the representation of European seats. I am not suggesting, as Mr. Ghuznavi has done in his note, that this is the widest weightage known in the world, and so on. I am accepting that their position in commerce and industry may justify 31 seats. The Government of Bengal suggested something should be done for the Hindu community. Never mind: let that go; you have not taken that into consideration at all. Have you, in connection with the Hindu ratio, taken any items into consideration, except population?—I am not prepared to go into the detailed reasons that have made us give this decision: It was made quite clear, when the communities themselves failed to agree, that the Government was to be given a free hand to take what decision it thought fair. It was always assumed that the decision would then pass to us, and we must be left completely free to take what decision we thought fair. I think every member of the two early Round Table Conferences accepted that decision. We did not want to give this decision. All I can say is that there was no part of the communal decision that caused us greater anxiety or over which we took more meticulous care than the question of Bengal. For days and weeks we investigated every aspect of the problem, and after this very long investigation, in which we were in constant touch with the Governor and the Government of Bengal and the Government of India, we came to the view that our decision was a fair one.

7488. May I get some facts before the Committee. I am not putting any argument; I only want to put some facts so that the Committee can get them in a short compass. The communal decision is dated the 17th August, 1932?—August 16th.

7489. In my copy it is the 17th. One day does not matter. Under this award or decision the net result of that was, as regards the depressed classes, that they would vote in the general constituencies, and their number of seats would be 10, and the arrangement would come to an end after 20 years. To put it very shortly that was the decision?—Yes.

7490. The other date is the 18th August, 1932. That is the date on which Mahatma Gandhi wrote his letter to the Prime Minister—(I am quoting the words)—threatening a fast and saying: "This fast will cease if the British Government will revise their decision and withdraw their scheme of representation for the depressed classes." Mahatma Gandhi wrote this letter to the Prime Minister threatening a fast and these consequences. Does that date agree with your information?—I have not got the dates here. I take it the dates are accurate.

7491. Will the Secretary of State accept this course? May I put all these dates in my questions, and, if there is any mistake it can subsequently be pointed out either by communication or by some other means?—Yes.

7492. I am giving the dates. On the 18th August that letter was written by Mahatma Gandhi to the Prime Minister. On the 8th September, 1932, the Prime Minister wrote back to Mahatma Gandhi pointing out that the Prime Minister's scheme, that is to say, the communal decision, had not separated the depressed classes from the Hindu community. The point is the date; on the 8th September the Prime Minister tried to reason with Mahatma Gandhi that nothing wrong had been done. On the 15th September, 1932, Pandit Madan Mohan Malaviya issued a notification in some of the newspapers calling a Conference to be held at Delhi on the 17th and 18th September. The invitation as it appeared in the Press was stated to be "To a few friends." That is the 18th September, 1932. On

the 16th September, 1932, another announcement was made by the same gentleman, Pandit Madan Mohan Malaviya in the Press that the venue had been changed from Delhi to Bombay, and, on the 20th September, 1932, the fast which later on was described as the fast unto death, began. On the 24th September the condition of Mahatma Gandhi was announced to be very serious, and on the 25th September, 1932, the pact was signed. These are the dates I am giving to you. You can subsequently either correct them or accept them?—Yes.

7493. In my next question I am giving you some other dates, and I will not press for an answer if you are not prepared with an answer just now, but I am only indicating my case broadly because I shall call witnesses on these points to prove these facts. The pact was signed at Poona on the 25th September, 1932. In this pact there are many signatories. I do not want to read out all the names. There is no signatory representing the Bengal Hindus, and the very next day, on the 26th September, 1932, at Delhi, at 11 o'clock, the Home Member announced the acceptance of the pact by His Majesty's Government, and he said: "His Majesty's Government has learned with great satisfaction that an agreement has been reached between the leaders of the depressed classes and the rest of the Hindu community." That was the very next day it was announced in the Assembly. These are the dates if you will kindly check them. May I take it, judging by those, as also by your answers which you were pleased to give yesterday, that the Government here was under the impression that an agreement had been reached between the leaders of the depressed classes and the rest of the Hindu community? That must have been your impression?—I will answer your question when you have finished it.

7494. I have finished this question?—The Government, rightly or wrongly, have, under the terms of paragraph 4 of their original Communal Award accepted the Poona Pact as an All-India agreement between the parties concerned, that is to say, between the depressed classes and other Hindus. Everyone in public life in India must



have known that the negotiations from which the Poona Pact emerged were in progress, and it was to be presumed that any interested parties would take steps to secure that their views were not overlooked. It is perhaps not without significance (and I would draw the attention of the Committee to this fact) that no protest from Bengal seems to have come for a considerable time after the announcement of the Pact. Indeed, during the course of the discussions we received scores of telegrams in favour of the Pact; not a telegram against it, and, amongst those scores of telegrams, I remember off-hand a telegram from a very distinguished Hindu in Bengal, Sir Rabindranath Tagore. I do not know when protests first began to be made in Bengal, and I cannot trace that any representations were made to His Majesty's Government until something like three months after their acceptance of the Poona Pact. The Government expresses no opinion on the merits of the Pact in relation to Bengal. They would, of course, be perfectly ready to accept any modification in respect of Bengal reached by mutual agreement between the parties concerned, but the Government, as a Government, is precluded by the terms of its original communal award, from itself taking part in any negotiations towards that end.

*Mr. M. R. Jayaker.*

7495. What was the nature of the telegram sent by Sir Rabindranath Tagore? Did he approve of the Pact?—Urging the Government to accept the Pact.

*Sir Tej Bahadur Sapru.]* May I, Sir Samuel Hoare, tell you and the Committee one thing with regard to this matter? Both Mr. Jayaker and I happened to be in Poona for about four or five days during the progress of these negotiations. I have a very distinct recollection that telegrams were received from Bengali Hindus. I, personally, received a telegram from two or three important Bengali Hindus. I have not got those telegrams here, but I will further add that Sir Rabindranath did pay a visit to Mr. Gandhi in jail at the time, or shortly after the opening of the fast. That is my recollection. I am speaking subject to correction.

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*Sir Hari Singh Gour.]* He did.

*Sir Tej Bahadur Sapru.]* There was some sort of ceremony held. I left Poona immediately after the signing of the Pact; all this happened after I left. Probably, Mr. Jayaker was there, and he will be able to make a statement.

*Mr. M. R. Jayaker.]* I was not there when Sir Rabindranath Tagore called; I was not present in Poona.

*Sir N. N. Sircar.*

7496. Is Sir Samuel Hoare aware that Sir Rabindranath Tagore is a Brahmin?—I take it from Sir Nripendra Sircar that that is so. The indisputable fact, however, is that for many weeks we received almost countless telegrams and letters from India urging the acceptance of the Pact and not a single protest against it.

7497. I will not go into minute details, because I am waiting for evidence to be called upon this point, but have you scrutinised those telegrams? Whether they were all coming from Congress people?—They were all coming from Hindus, and I would not for a moment accept the suggestion that they came exclusively from Congress Hindus.

7498. As regards the sufficient protest not having been made at or about the time and telegrams coming from some people, may I put this situation to you, that when Mahatma Gandhi uttered that threat, it was not a question merely of a large section of the Hindus being ground down. Is it not right to say that that was the position also of His Majesty's Government?—That never entered into our minds at all.

7499. Let me put it to you, if it strikes you now in that way. When he said: "I am going to fast myself to death unless the British Government do this, that, and the other", you did not point out to him section 508 of the Indian Penal Code and say: "This is a crime, but we propose now to let you out of jail." Was not that His Majesty's Government's understanding also, because of overriding considerations, because if the man had been allowed to carry out his fast, tremendous consequences might have arisen. Therefore, you not merely acquiesced in what was an offence under the Indian Penal Code, but your offer was that a

man who ought to be kept in jail for other reasons, should now come out into the open. I am putting to you this?—Sir Nripendra Sircar can rest assured that we did not in any way act under any sort of threat or in any atmosphere of emergency. The only aspect of the question to which we looked was this: Was the agreement reached an agreement such as we had contemplated under the communal decision, judged by all the evidence that was available to us? Then, and for many weeks subsequently, it seemed to us quite conclusive that it was such an agreement.

7500. I think you are aware that a representation was made to the Prime Minister by a letter from me in December, 1932, enclosing certain telegrams which had come here in November from members of the Bengal Council?—I am aware that Sir Nripendra Sircar has taken a very close interest in the question from start to finish.

Sir N. Sircar.] I sent that letter on to the Prime Minister as requested by the Members of the Council, and you will find that before I sent to the Prime Minister this telegram of protest from the 25 Members of the Bengal Council, that Bengal are not represented, and so on, it was shown to Dr. Ambedkar, who sent a telegram to Bombay to find out what their reply to this telegram was. I thought it fair to show it to him, so that he could get his version from Bombay, and this is the reply which he got.

Dr. B. R. Ambedkar.] I am sure I did not do anything of the sort, if Sir Nripendra Sircar will forgive me. Sir Nripendra Sircar represented that he showed to me a certain telegram and asked me to get certain information about it from Bombay. I did not do anything of the sort.

Sir N. N. Sircar.] I have got the copy which was handed over to me by Dr. Ambedkar, and I will read to you the reply which he got.

Dr. B. R. Ambedkar.] It is not a reply; it is an independent telegram sent to me.

Sir N. N. Sircar.] The point is the contents of the telegram, which said that the Bengal Hindus are bound by reason of their default in not appearing at

Bombay, that is to say, it was put on the ground that we were bound because we had not taken part in the Pact. I think you must have found that in the telegrams that were sent to the Prime Minister.

Witness.] I think it is very unfortunate that those telegrams were only sent in December, and were not sent when the negotiations were actually in progress.

7501-2. The telegram was in November. It was sent in December, because I was waiting for the replies, and so on, and the Bengal Council met for the first time after these negotiations in November. As soon as they met, 25 members sent this telegram, or representation, to the Prime Minister. I only wanted to point out to you that whatever may be said, it has been the case that Bengal has gone by default. The case of Bengal has never been made, even in that telegram. Now the next matter to which I draw your attention is a very short one. Does Sir Samuel Hoare agree with the view that the situation which has been created as the result of the Poona Pact and the communal decision, will lead to very terrible and serious consequences in Bengal?—No, I do not think I do.

7503. Is it your opinion that if the vastly preponderating majority of seats of the Muhammadans, 119 seats, are reduced by 10 or 12 seats, that will lead to terrible consequences in Bengal?—I do not accept the phrase, "vastly preponderating majority", nor do I think that the result will be disastrous.

7504. I am now going to another point altogether for certain information; I think I gave notice of this to your office as well, Sir Samuel. Without going into details, you may remember that when Mr. James, of the European Association, was in the Witness box, and also Sir Edward Benthall, they said that there was a general feeling of nervousness in Bengal about the large expansion of the franchise and the large number of seats allocated to Bengal. In connection with that, I put a query, or rather asked the India Office to supply you with certain information, and my question is this: In Bengal the recommendation of the Lothian Committee has been to enfranchise 16 per cent. of the total population against 7½ per cent., the maximum recommended by the Government of Bengal, and 10 per cent. re-

commended by the Bengal Provincial Committee which acted in connection with the Lothian Committee. The information I want is this: I am not talking of the question of ratio, that is quite a separate chapter altogether but assuming that the number of seats is reduced to 200 from 250, and the franchise is accepted at 10 per cent. as recommended by the Bengal Provincial Committee, as against 16 per cent. recommended by the Franchise Committee, what will be the difference in expense? I want only a rough estimate, if that is possible?—The only figure that I have is an estimate from the Bengal Government of the additional annual expenditure on the Legislature, if the White Paper proposals are adopted. That estimate is 1½ lakhs per annum recurring, with capital expenditure of 6½ lakhs on fresh accommodation for the Upper Chamber. It is not stated how much of the recurring cost is due to the Second Chamber. The additional cost of each general election, taking the White Paper franchise, which would yield 15 per cent. of the population, is given as 11 lakhs. I cannot give any very accurate answers to these questions, but it would appear that, roughly speaking, the saving, if no Second Chamber were established, and the Lower Chamber were 200 instead of 250, would be something like 1 to 1½ lakhs a year, with a saving in capital expenditure of 6½ lakhs, and that the reduction in the electorate would save an approximate sum of from 1 to 1½ lakhs a year, assuming on the average a general election to be held every three years.

*Sir Hari Singh Gour.*

7505. Five years?—We were assuming three years. We were assuming that we had better take a very conservative estimate.

*Sir N. N. Sircar.*

7506. From your answer, I gather that it is not possible for you to say what is going to be the estimated cost of the Second Chamber only as provided for in the White Paper?—I have not got any figure available. If I can get at a more accurate figure, I will let Sir Nripendra Sircar have it.

7507. Now another question is this; I think it will be the last I shall ask you,

Sir Samuel. You may remember when I put to Mr. Villiers that if the number is reduced to 200 from 250—I am talking of the number of seats, and again I am not going into the question of ratio on this part of the case—he said there would be no further difficulty in the matter of getting representation of all the interests involved in Bengal, of the Muhammadans, the Hindus, the Depressed Classes, and so on. Have you any definite views on the matter? Do you think there will be any difficulty? Is there any necessity for this number of 250?—I do not think I should go so far as to say that any particular number is verbally inspired. What I can say is that taking into account the very many interests in Bengal, and taking into account also the problem of the communities, 250 seemed to us to be a good number. I will not put it higher than that.

7508. I think I take your answer to mean that you are not in the position definitely to differ from Mr. Villiers's opinion that 200 might do?—I would neither differ from it, nor would I agree with it. These problems of representation in Bengal are so complicated and so controversial that I would rather not express an opinion.

7509. My last question will be this: Do you think there is any objection—I gather you have no objection from your last answer—or would you think it advisable to have an inquiry into this matter as to whether there is really any necessity for 250 members?—Off-hand, I should hesitate to support a special inquiry of that kind anywhere. I think it would immediately open the floodgates to inquiries all over India. After all, we have made this recommendation as the result of two or three years of discussions of this and cognate questions.

*Sir N. N. Sircar.]* That is all I ask, thank you.

*Dr. B. R. Ambedkar.]* My Lord Chairman, may I have your attention for a moment to make a very brief statement with regard to a question or two that was put by Sir Nripendra Sircar, in view of the fact that he may not be here when my turn comes? Sir Nripendra Sircar said that he got a telegram during the course of the Third Round Table Conference last year and that he showed it to me and that I made inquiries with

regard to that telegram, and that I got a certain telegram in reply to that. The point that I would like to make clear so that Sir Nripendra may have an opportunity to correct me if I am misstating anything is this : The telegram which I got was not a telegram in reply to any inquiry that I made.

Sir N. N. Sircar.] I may cut the matter short.

Dr. B. R. Ambedkar.] I just want to say a word.

Chairman.] Please let Dr. Ambedkar make his statement.

Dr. B. R. Ambedkar.] The telegram to Sir Nripendra Sircar was published in the Indian papers and when the members of the Anti-Untouchability Board that was established by Mahatma Gandhi after his fast was over learned that this telegram was sent to Sir Nripendra Sircar protesting against the Poona Pact, they, of their own accord, sent me the telegram to which Sir Nripendra Sircar has made reference. It was not in reply to any inquiry that I made. The next point I want to bring to the notice of the Committee is that when Sir Nripendra Sircar showed me the telegram he got from his Bengal friends protesting against the Poona Pact, he told me that all he was going to do was to send that telegram to the Prime Minister, without any comment, for his information. On the day before he left he very kindly sent me a copy of the letter which he addressed to the Prime Minister. In that letter I found that Sir Nripendra Sircar had not only forwarded the letter to the Prime Minister, but had urged upon the Prime Minister to make an inquiry as to whether the Bengal caste Hindus were represented at the time when the Poona Pact was settled. In view of that I also immediately wrote a letter to the Prime Minister, a copy of which I shall present to the Committee when my turn comes, in which I also forwarded the telegrams which I had received, and I also stated that the fact mentioned in the telegram that the Bengal caste Hindus were not represented when the Poona Pact was made was not correct to my knowledge, because I knew, as a fact, that several members from the Bengal caste Hindus were present when the Pact was made, that they had had conversations with

me and had pressed me to come to terms. That is all I want to say at this stage.

Sir Akbar Hydari.

7510. I want to ask very few questions regarding the Legislature. Two hundred members for the Upper House and 300 for the Lower House was a compromise reached at the Second Round Table Conference. Would you agree that this compromise was in the nature of a balance struck as between those who were in favour of a small Federal Legislature and those to whom numbers were comparatively unimportant?—I think that was generally the case. Sir Akbar will remember that at the first two Round Table Conferences there was a protracted discussion about the numbers for the Legislature. Some wanted to keep the numbers very low. I remember the proposal was made that the numbers should not exceed 100 for the Upper Chamber and 200 for the Lower Chamber. On the other hand, other members of the Conference proposed numbers I think as high as 500 or 600 for the Lower Federal Chamber, and the number that Sir Akbar has just mentioned was at that time regarded as something in the nature of a compromise between those two points of view.

7511. Then came the Lothian Committee who recommended an Upper House in which British Indian seats would have numbered 200, and a Lower House in which British India would have had 300, or, if the States' quota were added, a Legislature of 300 in the Upper and 450 in the Lower House. Would you agree that the numbers recommended in the White Paper are, in their turn, a balance struck between the compromise arrived at at the Second Round Table Conference and the recommendations of the Lothian Committee?—I do not think I would agree that it was a compromise between the two points of view. Our figures rather were founded upon the need, first of all, of meeting the wishes of many of the States who felt that their interests might be ignored in much smaller Chambers, and, secondly, with a view to ensuring a reasonable representation of British India, assuming the general basis of the Lothian Report.

7512. Was not the general basis of the Lothian Report which led them to prefer direct to indirect election and to increase the number of both Houses so considerably beyond what had been agreed to at the Second Round Table Conference a desire to enable the members of the Federal Legislature to establish effective contact with their constituents?—Perhaps Lord Lothian would answer the question from the point of view of his Committee. I certainly admit that the problem of direct and indirect election must have a direct bearing and always has had a direct bearing upon the size of the Chambers in the Federal Centre; but perhaps Lord Lothian would amplify that answer because the point is directed mainly to him.

Marquess of *Lothian*.] I can answer it in two words. In the first place, the Franchise Committee recommended no alteration in the Upper House. They accepted the figures of the Second Round Table Conference. As regards the Assembly, when they came to examine the figure of 300 which was proposed by the Second Round Table Conference for the Lower House they were impressed by the fact that 200 seats of those only would be allotted to British India, that a certain number of those seats would go to special interests, and therefore that the number of seats left for general constituencies, especially under a Communal Award, would inevitably involve very large constituencies from the point of view of area and numbers. They therefore thought, in point of view of diminishing the difficulty of maintaining contact between the member and his electorate, it was desirable that the number of seats for the Lower House in British India should be raised from 200 to 300.

Sir *Akbar Hydari*.] May I ask Lord Lothian whether the numbers in the Upper House were not raised by his Committee to 300 from the 200 previously agreed?

Marquess of *Lothian*.] Here are the actual words of our recommendation, on page 163, paragraph 400 of the Franchise Committee Report; "So far, therefore, as the Senate is concerned there is little for us to say. We

recommend no increase in the numbers of the Senate, both because an upper house should be a smaller and more compact body than the lower and because the present quota allotted to the provinces is as large as can conveniently be elected by the legislatures, if their own members are not to be liable to undue depletion."

Sir *Akbar Hydari*.] As soon as you recommended 450 for the Lower House, then, taking into account the whole structure of the Federal Legislature and the relations between the two Houses, was it not inevitable that that would lead to an increase in the strength of the Upper House; and it was that consideration which led His Majesty's Government, in the White Paper, to increase the number of seats in the Upper House.

Marquess of *Lothian*.] May I refer Sir Akbar to the last sentence of paragraph 396, page 161: "Moreover, we recognize that in framing our proposals we are thinking of British India alone, and that before final decisions are taken regarding the federal legislature, further discussion between the representatives of the Indian States and of British India as well as of the British Government, will have to take place"? I think the figures in the White Paper are the result of those further discussions.

Sir *Austen Chamberlain*.

7513. Is not it clear that if certain questions are to be settled by a Joint Session, if you increase the numbers in the Lower House, you must increase the numbers in the Upper House in order to maintain the original proportion between the two in the Joint Session?—That, my Lord Chairman, is one of the reasons that made us make this proposal. It is not the only reason. The other reason was the strong feeling amongst a substantial number of the States for a sufficient number that would enable a good many of them to have direct individual representation in the Upper House.

Sir *Akbar Hydari*.] I will turn again to the other question: Coming to Lord Lothian's statement, was it not that in the construction of the Federal Legislature the representatives of the States should have been consulted by the

Lothian Committee or the Lothian Committee should have left that matter separately for consideration before they gave the imprimatur of an expert committee like that to certain numbers for British India which would inevitably lead to any case for the consideration of that question being prejudiced thereby?

[Marquess of Lothian.] I can only answer by referring to the Letter of Instructions to the Indian Franchise Committee: "To your Committee His Majesty's Government will look for complete and detailed proposals on which to base the revision of the franchise, and the arrangement of constituencies for the new legislatures, central and provincial, which are to form part of the constitution envisaged in the statement to which I have referred." Which was the Prime Minister's statement to Parliament. "And since upon these detailed proposals must largely depend the size and actual composition of the Legislatures, His Majesty's Government hope that your Committee will be in a position, in due course, so to frame their proposals as to present a complete and detailed scheme for the composition of each of the Provincial Legislatures and of the Federal Legislature." I think that is all that is relevant, and it was in the light of that that we proceeded. As I pointed out to Sir Akbar, we were considering definitely only the British Indian aspect and these other matters would have to be a matter of negotiation between the Indian States, British India and His Majesty's Government later on.

Sir Akbar Hydari.

7514. At any rate, it was recognized that one of the principal reasons for the Lothian Committee going and recommending these numbers was in order to establish effective contact with their constituencies, a consideration with regard to which the First Round Table Conference had given very great attention, and they record the matter as follows in paragraph 20 of the First Round Table Report: "The trend of opinion as to the size of the Lower Chamber was that it should consist of approximately 300 members thus providing roughly one representative for each million of the inhabitants of India. On the other hand, the view was strongly expressed that the requirements

of efficiency would not be met if the Chamber were to exceed 200 as a maximum. The Sub-Committee, as a whole, recognized the force of these considerations and also of the desire for a Chamber of sufficient size to afford a reasonable approach to adequate representation of the population. But since no real approach to this latter ideal could be secured without enlarging the Legislature to an undue extent, the Sub-Committee think that, having regard to the great importance which must be attached to efficiency of working, 250 should be adopted as the number of seats to be provided in the Lower Chamber." Therefore, I want to submit that, really speaking, so far as the Lothian Committee was concerned, it had before it the problem of British India, and in framing their recommendations for the strength of the British India quota, they had this point mainly in view. Would you agree, Secretary of State, that Sir Austen Chamberlain's questions and the answers thereto have shown that this ideal of establishing contact would have been imperfectly reached even if the Lothian Committee recommendations as to size had been adopted?—I think certainly if you take the conception of representative government that we have here, it would only imperfectly be applied in conditions such as you have mentioned.

[Mr. Rangaswami Iyenger.] Would it be correct to say that in the case of the Indian States representation there would not be anything like the contact between the member and his constituency that there would be between the member and his constituency in British India in the Federal Assembly?

[Sir Akbar Hydari.] I am coming to that. I am not contesting it. All I am trying to find out is as to how these numbers have come to be what they are, and whether these numbers really satisfy the condition that you had in view and, if they do not, whether the problem does not deserve re-examination and reconsideration?

[Sir Tej Bahadur Sapru.] May I put a supplementary question arising out of that?

[Chairman.] I would rather hear the Secretary of State's answer to that first. I am not quite sure what is the question to which I am expected to reply.

*Sir Akbar Hydari.*

7515. I replied to Mr. Rangaswami Iyenger. I followed up the question by asking in supplement to the last question to you, Secretary of State, that the ideal of effective contact, which has been admitted to have been very imperfectly reached by the Lothian Committee's figures, would be still more imperfectly reached under the figures recommended in the White Paper, because under them the size of the constituencies will be even bigger than their size under the Lothian Scheme?—You mean, Sir Akbar, that we have reduced the numbers and, therefore, the constituencies become bigger?

7516. Yes?—That is so.

*Sir Akbar Hydari.*] And, therefore, the whole basis for increasing the number in order to create an effective contact is a basis which really has not been reached, and, therefore, you should seek some other basis for providing for that contact. That is all that I want to urge.

*Sir Tej Bahadur Sapru.*

7517. May I put one question to you, Sir Samuel? Is it, or is it not, a fact that so far as the Indian States' representatives themselves are concerned, there has been a great divergence of opinion between two sections of them, one represented by Sir Akbar Hydari and the other represented by their Highnesses the Maharajah of Bikanir and the Nawab, whose views approximated more nearly to the British-Indian point of view on the question of the size of the Legislatures?—That has been one of the difficulties with which we have been faced, namely, to reconcile the two points of view; the first, the need to have an efficient Legislature and a Legislature not too big; secondly, the need to ensure such representation for the Princes as will make them feel that their weight is really being felt in the Legislature.

7517A. And you include among them the Central States, too, and their point of view?—I am including all the various groups of States.

*Mr. M. R. Jayakar.*

7518. May I ask, on that supplementary question, is it not a fact that those representatives of the States, like their

Highnesses of Bikanir and Bhopal, who favoured larger Houses did so partly for the consideration that larger Houses will provide for a better representation of the smaller States than smaller Houses would?—I do not think I would like to be drawn into giving an account of what was in their Highnesses' minds, or what was not; but it is true to say, that there were three views expressed by the representatives of the Princes: There was the view for very small Chambers—indeed, the view was expressed for only one small Chamber at one time; then there was the view expressed by His Highness of Bikanir and those of the Princes who were working with him, for a moderate sized Legislature; and there was a third view, I think chiefly expressed by some of the very small States, for very big numbers. My own view has always been that we must hold the balance between those three points of view. I have also thought, and I have constantly expressed this view in our former discussions, that whatever plan we have for the Princes' representation will inevitably involve grouping. It is quite out of the question to contemplate the individual representation of this very large number of big, medium, and small States.

*Sir Austen Chamberlain.*

7519. It really has been a question of the degree to which grouping is to be carried?—Exactly.

*Sir Akbar Hydari.*

7520. That is exactly the point which I thought might be mentioned. I have no desire whatsoever that the point of view of any one particular section of the States should have predominance. All that I feel is that it is possible, from the strong emphasis which many of those very States have laid upon equality of representation, as far as possible, along with individuality of representation, it is a matter worth pursuing, if on other grounds you are convinced of the merits and necessity of small Legislatures. It is worth pursuing and examining whether from the Indian States' point of view, you will not be able to get the Princes to agree to a smaller House, to a smaller quota; if it is once felt that, on the one hand, what will happen will be that

the larger States will have to give up a large number of the plural voting they will have and that grouping will be inevitable; that many of these other States will all get individual representation. All that I was trying to ask for was not any definite decision from the Secretary of State, but what I was suggesting was that if on other grounds indirect election is necessary, and on other grounds the smaller Legislatures are necessary, then, is it not desirable that this question with regard to the representation of the Indian States and what the large majority of the Indian States desire, should really receive further examination?—I would certainly say that we should have to pay very great attention to what any large majority of the Indian Princes think upon the subject.

7521. All that I submit is that I do not know whether that question and that issue have been placed before the Indian States in the way and in the manner in which you might be able to get a real and effective opinion?—My own position, my Lord Chairman, has always been clear in this matter. I have always been in favour of having the Legislature as small as ever we can make it, taking into account the interests that have got to be represented and the purposes for which it is required. I, myself, would welcome any proposals that would diminish the numbers if those two prerequisite conditions can be justified. My difficulty has been that so far it has seemed to me to be almost impossible to satisfy the requirements of the Princes with very small numbers, and it has also seemed to me to be almost equally impossible to satisfy public opinion in British India; but I say once again this morning that, upon grounds of abstract merit, there is a great deal to be said for small Chambers at the Federal Centre.

*Sir Manubhai N. Mehta.*] May I also request that besides considering the personal opinion of Sir Akbar Hydari—

*Sir Akbar Hydari.*] It is not a personal opinion; it is the opinion of many States.

*Sir Manubhai Mehta.*] I will refer to that as a personal opinion by quoting from Sir Akbar Hydari's remarks at the Second Round Table Conference. Besides

that, there is a large consensus of opinion on behalf of the Princes which may also have to be heard here, if there is time to do it.

*Sir Akbar Hydari.*

7522. I want to make it clear that I do not want to pursue this subject to any final conclusion now. All that I was suggesting was that the question of the strength of the Legislature appeared to me to be of such fundamental and paramount importance with regard to the functions which it will have in being the Instrument of the grant of responsibility in the Centre and the kind of questions with which that Legislature will have to deal, highly technical questions, the fact that you will have to bring this Legislature into relation with Provincial Legislatures, the fact that the Provincial Legislatures will themselves be on a very democratic basis—all these facts lead me to the position that this matter of the strength of the Legislature is of such vital importance that you cannot pay too great attention to it, and that there should be a sufficient examination, and all possible avenues explored of bringing together the various interests into some common agreement. What I thought from the answers which the Secretary of State gave was that it was mainly a political question, the urge, on the one side, of British India, and the urge, on the other side, of a large number of States, which led him to decide upon a number much larger than what we had agreed to in two Conferences after detailed consideration—much larger than what he himself thought was on abstract principles desirable; that it was the political considerations which led him to this conclusion; and what I submit is that, possibly, some others might interpret the political conditions in a different way, and might feel that, possibly, gradually, the urge of British India, especially through the Provinces, and the urge of the Indian States when they realised that their interests would be much better served by the election of representatives of experience through groups, individual views in votes, I felt that, possibly, ultimately, these very political considerations might change and lead to the demand for a smaller House; but then it would be too



late, because, as you all know, if you start from a large basis, you cannot contract, but you can always expand from a small basis to a larger one; therefore, all that I want to submit to-day is that this is a question which still it is, I think, not too late to explore further, and before the Committee comes to a final conclusion?—I should like myself to hear the views of other representatives of the States before I make a comment on Sir Akbar Hydari's very interesting statement.

*Sir Manubhai Mehta.*

7523. I thought it was an examination, not a discussion?—People define it in different ways.

*Sir Mirza M. Ismail.*

7524. I should like to say something, not so much with regard to the size of the Legislatures as with regard to the composition and character of the two Houses. I should like to ask the Secretary of State if he agrees with the view that the two Chambers, as suggested in the White Paper, are a little differentiated from each other in composition and therefore in outlook?—I think under the White Paper proposals there is a definite difference between the two: the Lower Chamber elected directly by the electorate; the Upper Chamber elected by the Provincial Council, constituted into an Electoral College. I think that does make a definite difference between the two.

7525. Both are elected Chambers, are they not?—Yes.

7526. So in a Federal Constitution, is it not necessary to have at the top representatives of the Governments of the federating units as well?—That is certainly one conception of a Federal Government. It was the conception, I think, of the old German Empire, the Upper Chamber representing the Governments, the Lower Chamber either the States or the Nation; and there are strong arguments to be urged in favour of a proposal of that kind. But, here again, when the proposal has been made that the Upper Chamber should be a Chamber representing Governments, it has found very little support, indeed, scarcely any support. I believe I was bold enough

once to throw out the suggestion myself; I do not think I found any support anywhere at all.

7527. Sir A. Hydari, I think, has supported the proposals?—Perhaps I did have one or two friends, but I had not many.

*Sir Austen Chamberlain.*] Perhaps you have more to-day.

*Sir Mirza M. Ismail.*

7528. It seems to me a proposal which is well worth considering, because, according to the proposals now put forward, the proposals contained in the White Paper, the political factor is represented in both Houses, but we have not got the other and most important factor, that is, the Governments of the Federating units. It seems most desirable in a Federal Constitution that they should also be represented. Moreover, according to the proposals in the White Paper, the Ministry is made responsible to both Houses. Is that not so?—Yes.

7529. And that is not the case, even in England; the Ministry is not responsible to the Upper House?—I do not know what the Noble Lords would say about that. I would rather not give an opinion.

• *Mr. Zafrulla Khan.*] My Lord Chairman, may I, in connection with this, draw the Secretary of State's attention to this: His replies indicate that the Chamber will be of one character or the other. It is not so. The Upper Chamber, as visualised in the White Paper, will be partly composed of representatives of the Legislatures of the units, and, to the extent of 40 per cent., composed of the nominees of the Governments of other units; and the Lower Chamber will be composed to the extent of 66 per cent. of the representatives of the nation or representatives of the peoples of certain units, and, to the extent of 33 per cent., of representatives of the Governments of other units, so it will be a kind of Legislature in which to a very large extent the Government of certain units will be represented, and with regard to the rest, in the Upper Chamber the Legislatures of other units, and in the Lower Chamber the peoples' units, and so you will have a sort of compô of elements.

*Sir Akbar Hydari.*] Is not what *Sir Mirza Ismail* had more in mind and what, at least, I had in mind with regard to British India, that in the matter of Finance and Taxation, in order to have co-ordination between the different methods of taxation, direct and indirect—for instance, the Provinces and the units will have more direct taxation at their command, and the Centre will have indirect taxation; and in regard to such questions as transport, which will be another of the main things with which the Central Government will have to concern itself, there will be the question of trunk railways, which will be all with the Centre. There will be railways and roads, and other methods of transport which will be with the Provinces. In all these questions, will it not be that the Provincial Governments, as Governments, would require to have a voice, when questions of this kind are taken up by the Federal Cabinet. It is not merely that you provide for the representation of the Legislatures, but what I believe *Sir Mirza Ismail* had in mind. What I had in mind certainly was that we had repeatedly been impressed with the necessity of bringing in the Provincial Governments and Ministers into contact and liaison with the Federal Government.

*Mr. Rangaswami Iyenger.*] Do you mean that these Provincial Ministers are going to be present at the Federal Legislature to present the Provincial Government's point of view on all subjects?

*Kao Bahadur Sir Krishnama Chari.*

7530. They might send delegates?—May I be clear about what is exactly in *Sir Mirza's* mind? This does not come up directly perhaps on questions of franchise, but it is very closely connected with it. Supposing the Upper Chamber was a Chamber of nominated Ministers, and the Lower Chamber was a Chamber in which anyhow a large percentage of the Members would be elected, the very difficult problem then comes up of the relations between the two Chambers.

*Sir Mirza Ismail.*] The Upper House would have to possess different functions altogether. It would be the Federal organ of the State.

*Mr. Rangaswami Iyenger.*] That is true. It would be a kind of administrative Council.

*Sir Mirza Ismail.*

7531. I have explained that in my remarks at the Second Round Table Conference?—It does in actual practice, does it not, *Sir Mirza*, leave a single Chamber in the Federal Centre to which the Federal Government is responsible. I am not now arguing whether it is a good plan or a bad plan, but it is single Chamber Government from the point of view of the responsibility of the Federal Government at the Federal Centre.

*Sir Mirza Ismail.*] Not necessarily so, because the Federal Council would have an effective voice in regard to many matters. It would have a suspensory veto on laws passed by the Federal Assembly with which it did not agree. It would be a much more effective check over the Lower House than the present Upper House would be because what you are now devising appears to be a bicameral system, but in reality it would work as a unicameral legislature with the Ministry responsible to both Houses. It might be at loggerheads with the one or with the other, if not with both. You are exposing the Ministry to danger of attack from one or other House of the Legislature.

*Lord Irwin.*] May I ask *Sir Mirza* one question on this evidently important question. If I understand *Sir Mirza's* plan aright it is that the Upper Chamber (the Federal Council I think he calls it) would be composed of representatives of the Governments from the Provinces.

*Sir Mirza Ismail.*] The Governments of the Federating units.

*Lord Irwin.*] The federating units.

*Sir Mirza Ismail.*] I would allow a certain number of State nominations.

*Lord Irwin.*] I do not want to elaborate it, but it will be composed of representatives of Governments.

*Sir Mirza Ismail.*] Yes.

*Lord Irwin.*] Therefore, so far as the British Indian Provinces are concerned presumably of Ministers.

*Sir Mirza Ismail.*] Not Ministers. They would not go there themselves, or they may not go there themselves, but

they would send some delegates who would be nominated.

Lord *Irwin*.] That answers my question because the difficulty I was feeling was that it would be very difficult indeed for any Minister probably to be doing more than one job.

Sir *Mirza Ismail*.] They would send some representatives to voice their views with regard to any matter which was coming up before the Legislature.

Marquess of *Reading*.] Suppose that the particular Ministry falls in the province, would it then change its nomination ?

Sir *Mirza Ismail*.] They could even send each Session a different man.

Marquess of *Salisbury*.] They would change.

Sir *Mirza Ismail*.] They would change.

Lord *Peel*.] Those nominees of the Ministers would be under the direct orders of the Ministers, and would have no independent judgment at all.

Sir *Mirza Ismail*.

7532. That is so, because what is wanted at the top of the Legislature is that the Federal Government should be in a position to know what the Government of Madras, or the Punjab, or any other particular Government thinks on a matter which is before them. That is what is wanted. You have provided for a popular element in the Lower Legislature. You might even increase the number to 400, if necessary, to give adequate representation to the Princes. They would be satisfied, and I would go further and say that paradoxical as it may appear, the smaller the Upper Chamber the greater the satisfaction to the Princes. It might appear very paradoxical ?—I have looked round at the faces of the other representatives. We shall hear with interest what they have to say.

Mr. *F. Thombare*.] I am very dubious.

Marquess of *Lothian*.] Will the effect of proportional representation be this, that the government of a province which will have a majority in its own Legislature under the responsible Government will, in effect, nominate its own nominees to go to the Upper House ? Is not that

exactly the proposal of the White Paper, apart from size ?

Sir *Mirza Ismail*.] I do not understand.

Marquess of *Lothian*.] If you have a system of proportional representation the Government of the Provincial Legislature will presumably have a Government majority ?

Sir *Mirza Ismail*.] Yes.

Marquess of *Lothian*.

7533. And they will presumably elect the larger number of the nominees the Government wish to send to the Centre ? You are getting what you propose under the system of proportional representation ? Sir *Mirza* has made these very interesting proposals once or twice before, and he has circulated (I have a copy of it still) a very interesting Memorandum on the subject. I believe myself it would be a good thing if he was kind enough to do it, if once again he circulated his Memorandum to the members of the Committee. I think this morning if we get into a detailed discussion about a number of alternative schemes we shall never finish.

Mr. *Zafrulla Khan*.] May I add one suggestion to the kind of thing that Lord *Lothian* has put before the Committee. There is this to be considered in addition, that the White Paper proposals give the age of the Senate to be seven years, the age of the Provincial Legislatures will be five. Would the Secretary of State, when he is further considering this question also consider this, that the Senate may be a sort of permanent body, and whenever a local Legislature is dissolved the new local Legislature should elect new members to the Senate, then the majority in a Province will always be more or less reflected in the Upper Chamber.

Sir *Mirza Ismail*.] That is a different principle altogether. The principle of the White Paper is entirely different.

Dr. *Shafa' at Ahmad Khan*.] It would give the same results.

Sir *Mirza Ismail*.] What Lord *Lothian* said was that the Legislature which appoints the Government will appoint the members to the Upper House. Once these members are elected by the Legislature they cease to have any responsi-

bility. They can express their own views, and they do not go and consult the Legislature on every point which comes up before the Federal Government. Once they are elected they are independent, but what the Federal Government would like to know would be the views of the Government of the Province.

*Dr. B. R. Ambedkar.*] The Government of the day of the Province.

*Sir Mirza Ismail.*] Of the day.

*Dr. B. R. Ambedkar.*] And if there were a change of Government of the Province there would be a change of representation at the Centre ?

*Sir Mirza Ismail.*] At the Centre. If you want to prevent this extreme provincialism that is already developing in India this seems to me to be the best way of doing it. You have already the popular element in the Lower House ; from the democratic standpoint there should be no objection to it because of the democratic Governments in the Provinces.

*Dr. B. R. Ambedkar.*] Send them with mandates to vote on a particular issue.

*Mr. M. R. Jayaker.*] If this scheme were adopted, would it not come to this, that although normally the life of the Provincial Legislature would end in five years and, as Mr. Zafrulla Khan pointed out, the life of the Upper House would be seven years, there must be necessarily one change in the personnel.

*Sir Mirza Ismail.*] According to this White Paper scheme, but not according to the suggestions I am making.

*Mr. M. R. Jayaker.*] Supposing the Provincial Legislature undergo changes owing to votes of no confidence being passed, say, in the course of five years three times, which is very likely in the earlier stages, does it not contemplate that there will be a change of personnel three times in the Upper House ?

*Sir Mirza Ismail.*] They would be withdrawn. It is the Federal Government you must remember.

*Mr. M. R. Jayaker.*] It means there would be a change of personnel three times in the Upper House in five years.

*Sir Mirza Ismail.*] It would be a small House ; 50 or 60 people might be withdrawn, or the Government might send a different man for every Session of the

Federal Council. Supposing there was a finance question coming up, they would like to send their own Finance Minister perhaps, or a special man to represent their views in that Chamber. I would like the Committee to consider the suggestion. I hope you will not regard it as impertinent on my part if I say it is well worth consideration.

*Lord Rankeillour.*] Do you contemplate Joint Sessions ?

*Sir Mirza Ismail.*] No Joint Sessions.

*Chairman.*] Will you supply to the Committee the Memorandum which the Secretary of State referred to ?

*Sir Mirza Ismail.*] Yes.

*Rao Bahadur Sir Krishnama Chari.*

7534. I should like to put one question to the Secretary of State on a point which has not been hitherto touched. The White Paper does not refer to the position of the Advocate General in the Constitution. Has the Secretary of State in mind the appointment of an independent authority like the Advocate General for the Centre. He might be very useful in the Legislature, and might furnish a machinery for the Governor-General's acts, and so on ?—I would like to look into Sir Krishnama Chari's point, and I will undertake to give attention to it ; off-hand I have not got an answer.

*Sir Tej Bahadur Sapru.*

7535. If I may say so that would fit in with your examination on the Judicature, and I would ask you to look at Section 114 of the Government of India Act ?—Sir Krishnama Chari asked whether I would look into the question of the advisability of having an Advocate General in the Federal Government. I have told him off-hand I could not give an answer to a question like that ; I would look into it.

*Mr. Y. Thombare.*

7536. It is now realised that the States attach vital importance to the question of their representation in the Federal Legislature, and it has the most intimate bearing on the size of the Federal Houses. Is it not essential that India's own needs and practical conditions must

be the governing factors, and is not the most outstanding feature of India the very large number of Sovereign States very varying in size?—I think substantially that is so.

7537. Did not the Princes and the British Indians press with a view to secure adequate representation to the States and also to the divers interests in British India that the numbers should be 450 and 300?—There has always been amongst the representatives of the States this difference of opinion to which I referred earlier in my evidence to-day.

Sir *Mirza Ismail.*] Would Mr. Thombare be satisfied if the States were adequately represented in the Lower House?

Mr. Y. Thombare.

7538. The States have been making a point of having a strong representation in the Upper Chamber also on account of the co-equal powers that they are aiming at in the two Houses?—Yes.

7539. Therefore it is essential that the States should have adequate representation not only in one House but in both the Houses?—Yes.

Mr. Y. Thombare.] If the numbers that have been proposed in the White Paper are reduced would not that reduce the representation which the Princes,

when they urged Houses of 450 and 300, had in view.

Sir *Akbar Hydari.*

7540. Not necessarily?—It depends very much upon the kind of grouping that you have in these Chambers. It certainly would obviously reduce the individual representation, but it would not reduce their collective representation.

Mr. Y. Thombare.

7541. The point is, the smaller the Houses, there would be so much less individual representation, and, to that extent, a larger number of States to be grouped together?—I think that must follow.

7542. The Government are already aware that what the States are most anxious about is the preservation of their individuality in the Constitution?—Yes.

7543. A 50-50 representation in the Upper House is perhaps not a practical proposition. Therefore does not the only chance of many States for securing adequate representation lie in securing comparatively larger Houses, of course, due regard being had to the fact that they are not unmanageable or too costly?—I think certainly as a general statement that is correct. The trouble, however, is that people define those general statements in different ways.

(After a short adjournment.)

Mr. *Rangaswami Iyenger.*

7544. Sir Samuel Hoare, you will recollect that I mentioned to you the matter of transitory provisions and asked you to give me some information as to the manner in which you expect these transitory provisions would work under Clause 202 of the scheme. I presume you received my Note on it, Sir Samuel?—Yes.

7545. The points upon which I want you to tell the Committee what is contemplated by His Majesty's Government in the proposals are, (1) in what way do you expect, for instance, Provincial Constitutions should be brought into being before the Constitution, as a whole, comes into being? Is it merely a question of bringing the Provincial Constitutions into existence with a view immediately on the basis of setting up the

Central Constitution, for instance, by reason of the fact that without Provincial Legislatures you cannot get the Second Chamber in the Federal Legislature into being, and, therefore, these transitory provisions apply only to the stage at which the Provincial Legislatures have got first to be elected, and some time must elapse before they are constituted, and elections take place, to the Federal Legislature. Is it only for that period that it is contemplated, or is it contemplated that it may become necessary to allow Provincial Constitutions to function for some time before a Federal Legislature may be actually constituted owing to other than Constitutional reasons? That is the first question that I want to put to you, Sir Samuel?—Is this your only question, Mr. Iyenger?

7546. No ; I have a number of questions hereafter. If you will take the Note as I gave it to you, and will give in a general way the answer, I will be content, and I will pursue it later on with other questions ?—The question you have just asked is really a question that raises the big issue of the date when the Constitution is coming into operation, and in what way it is coming into operation. I am quite ready to deal with it now. I was rather assuming that that was coming up later, if Sir Tej Sapru and Mr. Jayaker are very much interested in it, I can deal with it now.

7547. If Sir Tej is here, it will be useful. We shall leave it aside for the present then ?—Yes. Take the next point.

7548. Assuming that some time will elapse before the Local Legislatures and the Federal Constitution begin to function, you have stated here that provision will be made by means of temporary modifications in the provisions of the Constitution Act for continuing the existence of the present Indian Legislature ?—Yes.

7549. That is the first point upon which I want to put a question. What do you mean by saying, continuing the existence of the present Indian Legislature ? Do you mean that the Members of the Indian Legislature will have extended terms of their office, or do you mean that the existing Legislature, constituted as it is, will be re-elected for the purpose of functioning during this transitory period ?—Mr. Iyenger has been kind enough to send me a Memorandum of his views upon what is called the transitory period, that is to say, the period between the time when the Autonomous Provinces are set up and the time when the whole Federation comes into active operation. It is clear to me from Mr. Iyenger's Memorandum that either we have not made our point of view sufficiently clear, or that he, through no fault of his own, does not fully understand our position. He is nervous, I think, chiefly of this kind of thing happening in the transitory period. He is nervous of the Autonomous Provinces being set up, of the Federation not coming into being, and as a result of the setting up of the Autonomous Provinces, the existing Central Government becoming something in the

nature of Crown Colony Government. He assumes that the Viceroy's Council would come to an end, and that, therefore, the Central Government would become a much more personal kind of Government than it is at the present time. My Lord Chairman, that is not our intention. Our intention is to make only such changes in the Central Government during the transitory period as will enable the Autonomous Provinces to be set up, and as will ensure the Autonomous Provinces having full opportunity for developing their Autonomy. We, therefore, propose that within those conditions the Viceroy's Council would continue. Obviously, it would be subjected to alteration, both in its duties and also in its personnel, but always remembering the change that the setting up of Autonomous Provinces has made in the Constitutional picture, we should go on with the Central Government as nearly what it is now as it could be, assuming the conditions that I have just defined. Again, as to the Legislature, we should propose to make no changes in this transitory period in the methods under which the Legislature is constituted. We should either continue the existence of the present Legislature, or, if it looks as if the time of the transitory period was longer than some might expect, then we should have to make arrangements for the re-election of a Central Legislature, but we should do it upon the present basis. We have definitely come to the view, after a great deal of thought, that it is much wiser to deal with the transitory period on those lines than it is to adopt any alternative method for making substantial transitory changes in the Central Government. We think upon every ground that that would be a mistake. In the first place, it would make many people think that the period was not going to be a transitory period at all, but that it was a permanent period that we were contemplating. Secondly, I think that short of the larger changes that we are contemplating under our Constitutional procedure, the fewer smaller changes that are made, the better, from every point of view, and particularly from the point of view of stability.

Mr. Rangaswami Iyenger.] Is it on the principle that as small reforms are

the enemy of large reforms, you would not go in for small reforms ?

Mr. M. R. Jayaker.

7550. May I ask a question to clear one point ? The Secretary of State said that in the meanwhile there will be a change in the personnel of the Viceroy's Council, as I understood the Secretary of State's remarks. Does it contemplate that the Viceroy's future Counsellors will be drawn from the non-official elected Members of the Legislature, although responsible to him ?—I am assuming that the only changes that will be made will be such changes as are necessary as a result of the setting up of Provincial Autonomy. Otherwise, no changes would be made.

7551. You do not contemplate that the future Counsellors will be drawn from the ranks of the non-officials elected to the Legislature, but responsible to the Viceroy ?—No. I contemplate making no changes at all other than those necessary in the transitory period.

Mr. Zafrulla Khan.

7552. But the Secretary of State would not debar the Viceroy from selecting from among any section of the Legislature, if he thought he could find men suitable for his purpose to fill these posts. That is the position as at present ?—Yes, the position will remain exactly as it is.

7553. At the moment, a Member, even of the Legislature, is appointed a Counsellor, he will really cease to be an elected Member of the Legislature ?—Yes.

Sir Tej Bahadur Sapru.

7554. May I put one question at this point ? At the present moment, the law requires that there must be three members of the Executive Council who have put in ten years' service under the Crown ; there must be one member of the legal profession. Will you have the future Constitution during the transitory period conformed to this, or will you give the Governor-General the power to select any man he likes ?—No. As nearly as possible we shall make the transitory arrangement correspond with the existing arrangements.

L106RO

Mr. Rangaswami Iyenger.

7555. May I then take you specifically to the points that I have raised ? At present the Viceroy's Executive Council consists of six people, three of whom are, by existing practice and convention, Indians, and the appointment of the Indians to the Executive Council of the Viceroy is made on the footing that Indians were what Lord Morley described as of Anglo-Indian capacity. What I am asking is, whether in the transitory period that representation, whatever it may be worth with Indian opinion, would have in the existing Constitution, would or would not be kept in the arrangement that we contemplate ?—That would be kept in the arrangement that we contemplate. We should go on as near as possible with the kind of personnel we have got now.

7556. The second point which I think is an advantage (I do not know what you may think) is that the present scheme of Council Government does give the Members of the Executive Council a status and influence for good, and I think in this respect the influence and status of Indian Members as Counsellors would be very important during the transitory period, whether that status and influence as Members of the Executive Council having equal votes which can only be overridden by the special clause in the Government of India Act—whether that position will be maintained as far as possible in the transitory period ?—Yes. Mr. Iyenger will again remember the qualification I made, that the range of duties will obviously be altered by the operation of Provincial Autonomy, but, subject to that, my answer to him is, yes.

Dr. Shafa'at Ahmad Khan.

7557. I suppose, technically, they will not be Counsellors ?—No. I think technically there will have to remain the Council as well.

Mr. Rangaswami Iyenger.

7558. Let us go on to the Legislature. At present your suggestion is that it is better not to disturb the composition of the Legislature during the transitory period. What I am asking you is this : The anomaly of holding an election under the existing electoral system for

the Central Legislature and, at the same time, bringing into existence in the Provinces fully Autonomous Governments, setting up an office responsible to the Provincial Legislatures on a franchise which comprises nearly 20 to 25 per cent. of the population—whether that anomaly would not be felt to be difficult for these Provincial Governments and Legislatures to get on?—I admit it is an anomaly, but it is an anomaly that is inherent in the position. My own very strong view is that it is much better, frankly, to treat this period as a transitory period, and that the more you make arrangements that would make it appear to be a permanent period, the more likely is that period to go on for an indefinite length.

7559. Therefore, you would agree with me, Sir Samuel, that such an anomaly cannot be tolerated except for the very briefest period possible, it may be of months, and never, certainly, of years?—I certainly could not possibly say a month; I do not think anybody would say that. I cannot say more than that I definitely regard this as a transitory period.

7560. The only other question that I referred to in my Note is this, Sir Samuel: Take the powers of the present Legislature. According to the scheme of the White Paper, the Government of India Act, having been repealed, provisions in regard to the Budget in the White Paper, are framed differently from those which now subsist in the Government of India Act. To-day, although there is no responsible Government in the Centre, the Central Legislative Assembly has got the right to vote supplies on a large number of subjects. There are many subjects which are non-votable. I am asking whether you propose to reserve these powers to the Legislature and not to take them away in the transitory period?—We should go on with exactly the same powers and procedure in the transitory period as are now in vogue in the Central Government.

7561. Then I may take it, that the impression that I have formed, as many of us have formed on reading Section 202, is not what is really contemplated, namely, that you do not mean in the slightest extent to diminish, either the position of the Indian section of the

Executive Government or the Indian Legislature as it is now constituted?—That is so, except again, in so far as the field of Provincial Autonomy makes a difference.

7562. Of course. You do not contemplate another election on the new franchise proposals, for the reason that by doing so you will be really endangering the coming into existence of the Federation and Federal Constitution?—That is one of my reasons.

Sir A. P. Patro.

7563. May I ask a supplementary question? Will you kindly tell us whether it is the intention of the White Paper that you propose to dissolve the existing Central Legislature when the new Constitution comes into operation in the Provinces?—Not necessarily.

7564. Do you propose to continue the existing Central Legislature, or do you propose to have re-elections after the new Constitution comes into being in the Provinces?—I do not think it necessarily follows that we should dissolve the Central Legislature at once. The time factor comes into consideration and its lifetime also comes into consideration.

7565. They are now under extension?—I know.

Mr. Rangaswami Iyenger.] They are not now; power has been taken to extend them.

Sir A. P. Patro.

7566. Therefore, the question arises whether you would dissolve them along with the new Constitution coming into being or would you allow them to continue and extend them for a further period until the Federal Constitution comes into being?—We might take one or other of the courses; it depends so much upon the time. It might be more convenient to extend their lifetime somewhat further. It might, on the other hand, be more convenient to have an election; I would not like to say now.

Mr. M. R. Jayaker.

7567. There has been no case on record of an extension beyond one year?—I am aware of that fact, yes.



Sir C. P. Ramaswami Aiyar.

7568. May I put a few supplementary questions arising from the replies given to Mr. Iyenger? Let me understand, Secretary of State, the scheme as indicated by you. In the Viceroy's Executive Council at present there is one Member in charge of Education, Health and Lands. The question of continuing the functions and the jurisdiction of that Member will depend upon the setting up of the Provincial Constitution and complete Autonomy, and, therefore, the question of whether such a Member should be continued may arise?—Sir Ramaswami Aiyar will remember that alterations of that kind can be made by the Viceroy. In fact, there are very often changes of that nature made where the grouping of the powers is handed over to a particular Member of the Council.

7569. That is what I wanted to make clear, namely that the alterations that you contemplate being made with regard to the number and functions of the Counsellors will be alterations mainly consequential upon the election of Autonomous Provincial Government?—Yes.

7570. Excepting to that extent, the present functions and powers of the Executive Council will remain, more or less, as they are?—Yes, substantially that is so. There is the one exceptional case that we must keep in mind of the relations of the Viceroy to a Provincial Government, if, in his opinion, the interests of an Indian State are endangered. In that case, obviously, the Viceroy will have to intervene, as Viceroy, rather than as Governor-General-in-Council. It is only a comparatively small exception and it is a kind of exception that might never occur, but I think I had better state it to the Committee.

7571. Would it not be correct to say, that in a transitory period with reference to what you call the relations of the Viceroy with the Indian States, the matters will be kept, more or less, as they are at present, or is there any alteration likely to be made?—Only as regard the Provincial relations to which I have just referred.

L106RO

Sir Hari Singh Gour.

7572. May I ask a few questions dealing with the Central Legislature? Under Section 36 of the Government of India Act, the Members of the Governor-General's Council under the present Constitution are appointed by His Majesty and the number is fixed by His Majesty. Further, three at least of them must be persons who have put in at least ten years' service of the Crown in India. Now under the transitory provisions, I find the following facts are stated of removing the limit to the number of Counsellors whom the Governor-General may appoint. Will the appointment of Counsellors during the transitory period be by the Governor-General and not by His Majesty? Is that so?—No; it will continue to be by His Majesty, exactly as it is now.

7573. Then what is the meaning of removing the limit to the number of Counsellors whom the Governor-General may appoint?—It is for the purpose of supplementing paragraph 202 that I have just made my statement in answer to Mr. Iyenger.

Dr. Shafa'at Ahmad Khan.] The limit which Sir Hari Singh Gour refers to is the limit of three Counsellors in the White Paper. That limit may be removed by the Government of India.

Mr. Zafrulla Khan.

7574. It is page 40, paragraph 13?—Yes. I would ask members of the Committee and delegates to read paragraph 202, in the light of what I have said, namely, that we wish to keep the transitory arrangements as near as possible to the existing arrangements.

Sir Hari Singh Gour.

7575. Then further: "of placing the administration of all Departments of the Central Government under the Governor-General's exclusive control"?—I have just said that I want my statement taken as an interpretation of paragraph 202, and I have already said in answer to two questions that the Governor-General's Council will continue.

Mr. Zafrulla Khan.] May I draw Sir Hari Singh Gour's attention to one matter—perhaps, it is owing to that that these questions have arisen. What para-

graph 202 contemplates, so far as I understand, is this: Paragraph 202 is suggesting modifications not in the present Government of India Act, but it visualises the Government of India Act on the basis of the White Paper, and then says inasmuch as the White Paper will say three Counsellors, provision will be made that during the transitory period there will be no provision of that kind, and inasmuch as the White Paper says there will be responsibility at the Centre, the White Paper says it will not operate during the transitory period.

Sir *Hari Singh Gour*.

7576. I am perfectly aware of that, and it is with regard to that, that I am addressing the Secretary of State. Now it was pointed out in the Simon Commission that the constitution of the Governor-General's Council should be that the Governor-General should have control and that he should appoint Members from the Central Legislature. That is one of the recommendations of the Simon Commission. Is that recommendation going to be given effect to, even during the transitory period?—I have said over and over again since luncheon that it is not our intention to make arrangements of that kind that were intended for a permanent Constitution in the transitory period.

Sir *Hari Singh Gour*.

7577. The last question I wanted to put was with regard to what the Secretary of State has said, that he will make necessary changes to be operative during the transitory period after the Provincial autonomy comes into effect. Would he give the details of the necessary changes which he proposes to make during the transitory period?—I must be very stupid because I go on saying the same thing, and it does not seem to carry any conviction anywhere. I suppose I must, therefore, say it once again. The only changes I contemplate are such changes as are necessary to make the transitory period conform with the setting up of Provincial autonomy.

7578. I am aware of that, but what are those necessary changes? That is the point I am making. What are the changes which you consider necessary to conform to the Provincial autonomy

which you propose?—I should have thought it was obvious to everybody that when you transfer a number of subjects to autonomous Provinces the range of activities of the Centre is diminished to that extent. That is the kind of change I contemplate.

Sir *Tej Bahadur Sapru*.

7579. May I invite your attention to Volume II, page 7, of the Simon Commission Report?—Will you tell me what the point is?

7580. There is this sentence there, in the fourth paragraph, towards the end: "As far as possible, therefore, the object now to be aimed at is a reformed constitution which will not necessarily require revision at stipulated intervals, but which provides opportunities for natural development." Do you think that the constitution foreshadowed in the White Paper conforms to this statement in the Report, and do you agree with this opinion at all?—Yes, I agree with this opinion, and I think that the White Paper certainly conforms with the spirit and with the letter of that sentence.

7581. You will probably admit that there are certain parts of the White Paper which can only be amended at some time or another by an Act of Parliament?—So I should think; did the Statutory Commission admit that. There are members of the Statutory Commission here, and I imagine that they must also have assumed that Constitutional Amendment Acts would be inevitable.

7582. Will you kindly turn to the White Paper, Proposal No. 4, on page 38. I will read it out to you for your convenience: "The Federation will be brought into existence by the issue of a Proclamation by His Majesty declaring that on a date to be appointed in the Proclamation the existing nine 'Governors' Provinces,' with Sind and Orissa (which will be constituted as new and separate Governors' Provinces), are to be united in a Federation of India with such Indian States as have acceded or may accede to the Federation"?—Yes.

7583. In the Introduction you have explained the point of view of His Majesty's Government, which is that

the Federation cannot be started unless 51 per cent. of the Indian States representing one-half of the population and entitled to one-half the number of seats are ready to join the Federation? —Yes.

7584. From your knowledge as Secretary of State, how long do you think it will take to get the 51 per cent. of the Indian States to come in? I do not want to bind you down precisely to a date or a year; but roughly speaking? —Sir Tej Sapru has so often asked me this question that I wish very much I could give him a more definite answer than I have in the past. I am afraid I cannot. Perhaps, however, I might amplify that statement by one or two more general observations upon the subject. He knows the reasons (he may not think them good ones) why I have not been able to tie myself down to a date. The reasons, in a single sentence, are that there are uncertain factors about which it is impossible to be precise in the matter of dates. One of them Sir Tej has mentioned just now, namely, the time that it is likely to take for the accession of a sufficient number of Princes. The other factor that occurs at once to every member of the Committee and of the Delegation is the uncertain factor of finance. Having made those two preliminary observations, my Lord Chairman, I would venture to draw the attention of the Committee and of the Delegation to paragraphs 12 and 13 of the Introduction to the White Paper. I do not propose to read those two paragraphs. I assume that every member of the Committee and every Indian Delegate has read those two paragraphs. They will find that in those two paragraphs we have set out our general position as to the question of date. Indeed, my Lord Chairman, I think those two paragraphs are so important that I would venture to suggest, without my troubling the Committee by reading them, they might appear at this point on the Notes, namely, paragraphs 12 and 13 :

*“The Date and Conditions for the Inauguration of Federation.”*

12. It will be apparent that the mere passing of the Constitution Act will not of itself suffice to bring the Federation

into being. Apart from the preparatory processes required in British India, which cannot be completed until the Constitution Act is on the Statute Book, and which must inevitably occupy some time—the preparation of new and enlarged electoral rolls for the Provincial and Federal Legislatures, and the demarcation of constituencies are matters in point—the final discussions with the States with regard to their Instruments of Accession and the execution of the latter cannot be undertaken until the Act which will be the basis of the Princes' accession has been passed, for until that time arrives the States will not be in possession of complete knowledge of the character and powers of the Federation to which they are asked to accede. So far as the States are concerned, His Majesty's Government propose as the condition to be satisfied before the Federal Constitution is brought into operation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber shall have executed Instruments of Accession. Prerequisites of a financial character to the inauguration of responsible Federal Government are dealt with in paragraph 32. It is the intention of His Majesty's Government that the Federation shall be brought into being by Royal Proclamation, but that the Proclamation shall not be issued until both Houses of Parliament have presented an Address to the Crown, with a prayer for its promulgation. 13. At the same time His Majesty's Government do not contemplate the introduction of the new autonomous constitutions in the Provinces under conditions which will leave Federation as a mere contingency in the future. It is probable that it will be found convenient, or even necessary, that the new Provincial Governments should be brought into being in advance of the changes in the Central Government and the entry of the States. But the coming into being of the autonomous Provinces will only be the first step towards the complete Federation for which the Constitution Act will provide; and His Majesty's Government have stated that

if causes beyond their control should place obstacles in the way of this programme, they will take steps to review the whole position in consultation with Indian opinion. Provision will accordingly be required in the Constitution Act for the period, however short it may be, by which Provincial autonomy may precede the complete establishment of the Federation. The nature of the transitory arrangements contemplated for this purpose is explained in paragraph 202 of the Proposals."

I think I am right in saying that the chief fear in the minds of some of the delegates and the chief reason which led them to urge so insistently the inclusion of the Federal scheme as a self-contained unit and as a self-contained whole in a single Bill, was that if the proposals of His Majesty's Government were confined to providing self-government for the Provinces there was a danger that they might stop short at that point with no guarantee in a foreseeable future of the introduction of responsible government at the Centre, whether on a Federal basis or otherwise. In answer to this apprehension, I need only refer to the paragraphs of the White Paper to which I have just drawn the attention of the Committee. Those paragraphs reproduce, in substance, the undertaking I gave at the end of the last Round Table Conference. By that undertaking I myself stand, and I hope that the conclusions of this Committee will endorse it. But it is no use ignoring the conditions on which the White Paper scheme is based, or shutting our eyes to the fact that the satisfaction of these conditions depends on fundamental facts which may be beyond our control. It is this that makes it impossible for me to assign a date to the interval between Provincial autonomy and Federation. Having, however, said that, I wish to invite the Committee's attention to some considerations that have a bearing on the question. Whatever other deductions may be drawn from Sir Malcolm Hailey's Memorandum on the facts of the financial situation, it suggests to me, at any rate, that when we have reached a stage at which Provincial autonomy is a financially feasible proposition, we shall have gone a considerable way towards arriving at a situation in which Federation is a

financially feasible proposition. On the other hand—and here I turn to a further question that has been put to me during the afternoon—an exact examination of the process by which Federation can come into operation shows that it is not a physical possibility until the constituents which are to form the Federation are effectively in being. It is clear, therefore, that even if all the conditions were favourable, there must be some interval between Provincial autonomy and Federation; but this does not mean that the Federation which we are seeking to create in India can be left to form itself, and that all that we are called upon to do at the moment is to breathe the breath of autonomous life into existing geographical areas called Provinces. Perhaps I may now put my answer to the question shortly as follows: We have no intention of delaying the inauguration of Provincial autonomy beyond the point at which it is feasible, solely for the purpose of ensuring that the interval between it and Federation is short. On the other hand, we are doing, and will continue to do, all in our power to satisfy the conditions which the White Paper lays down as precedent to Federation. In conclusion, my Lord Chairman, I would once again revert to the financial factor. The members of the Committee and the members of the Delegation will remember that I emphasized the fact the other day that the Provincial problem of finance was, in my view, more difficult to surmount in certain respects than the Federal problem of finance. That seems to show that if the financial situation is such as to enable the Provinces to start upon their autonomous development in satisfactory financial circumstances there ought to be no insurmountable reason upon financial grounds to justify an indefinite delay between the two sides of the Constitution coming into operation. That factor also affects the problem of the States. It seems to me, therefore, that when we consider the financial aspect of any date we must regard the financial problem as a single problem and a problem that in my view will work out in this kind of way: If the financial conditions are such as to justify the institution of Provincial autonomy, then it seems to me they are very much the

same kind of financial considerations that would not necessitate any very great delay in bringing into operation the Federal Centre. Further than that, they are also the kind of financial considerations that I imagine would weigh very strongly with the representatives of the Princes, for in the event that I have just described, namely, the event of the finances being satisfactory, that would be the fulfilment of one of the conditions upon which the Princes have always insisted, namely, that the Federation must be upon sound financial lines. My Lord Chairman, I feel I have given a rather long answer, but the question put to me by Sir Tej Sapru is a very important question, and I felt I could only deal with it in some detail.

7585. Thank you. May I just ask you one or two questions arising out of this answer. I believe a Reserve Bank Committee has been sitting?—Yes.

7586. When do you expect that its report will be ready?—I wonder what any member of the Reserve Bank Committee would say.

*Mr. Rangaswami Iyenger.*

7587. So far as we are concerned, I think we have made very good progress so far. Many essential points have been discussed and there are points that remain for some decision, but we are making good progress. That is all I can say?—What we are trying to do is to have it ready for the finance discussion next week, and if I might I would impress upon the members of the Committee the extreme urgency of getting the report ready, if possible, by then.

*Sir Tej Bahadur Sapru.*

7588. Can we reasonably expect that the Reserve Bank will be established in a year or two?—Here again we are dealing with uncertain factors, and with the best will in the world it is almost impossible for me to give a definite answer to a question of that kind. We are dealing, first of all, with the question of legislation in the Indian Assembly. It has always been contemplated that the Reserve Bank Bill would be passed by the Indian Assembly.

7589. Yes?—When they will pass it, Indian Delegates can say better than I can. Secondly, there is the uncertain factor of the financial position. Sir Tej will remember the discussions we have had about the Reserve Bank; the fact that we have all admitted that reserves have got to be accumulated; that conditions have got to be such as to make it possible for the Reserve Bank to function satisfactorily. There again we are dealing with uncertain factors.

*Mr. Rangaswami Iyenger.*

7590. I think it is necessary for me to mention that the discussions in which the Sub-Committee have been engaged have proceeded on the footing not merely that this Reserve Bank Bill is to be passed by the Indian Legislature, but that the Reserve Bank should come into operation as a result of the activities of the existing Governor-General in Council; that is say, that it should be brought into existence before the Act which will constitute the new Government is passed?—We want to bring it into operation as soon as we can.

*Sir Tej Bahadur Sapru.*

7591. May I invite your attention to paragraph 32 of the White Paper Introduction, page 17?—Yes.

7592. The first question that I should like to put to you is as to the meaning of this expression "already successfully operating" in the first sentence. What will be the test that will be applied to the question as to whether the Bank has been successfully operating, and who will be the judge of that?—I do not in the least wish to defer an answer to Sir Tej's question, but I would have thought it was very much better to leave a question of this kind until we have the report of the Reserve Bank Committee, and until we are primarily considering questions of finance.

7593. Then I will not trouble you further. If you look at the same paragraph you will find towards the end of it there is this sentence: "The Report of the Committee of the third Round Table Conference on Financial Safeguards mentions the following as conditions to

be fulfilled—'that the Indian Budgetary position should be assured, that the existing short-term debt both in London and in India should be substantially reduced, that adequate reserves should have been accumulated, and that India's normal export surplus should have been restored'." You have, to a great extent, dealt with this matter in the very comprehensive answer which you were pleased to give just now, but I should like to know from you when you expect (reasonably again) these conditions to be fulfilled from your knowledge, and the advantage that you have of expert advice?—I am afraid, Sir Tej will think me terribly unresponsive. It is not that I wish not to give him an answer. It is really that I cannot give him an answer. It is impossible, dealing with uncertain factors of this kind, to say when conditions will or will not be satisfactorily satisfied. Again I can tell him that we shall do our utmost here, as we have done during the last 12 months in removing every removable obstacles.

7594. If you kindly proceed with the next part of paragraph 32 there you say: "If a situation should arise in which all other requirements for the inauguration of the Federation having been satisfied, it had so far proved impossible successfully to start the Reserve Bank, or if financial, economic or political conditions were such as to render it impracticable to start the new Federal and provincial Governments, on a stable basis, it would, inevitably, be necessary to reconsider the position and determine in the light of the then circumstances what course should be pursued." How long do you think we shall have to wait until that stage is reached when you may consider it necessary to take Indian opinion further into consultation?—I have never myself contemplated a long or indefinite time. I have always thought myself (though here I do not wish to be held to be making a carefully considered pronouncement) that the time to make the final financial enquiry into the position both at the Centre and in the Provinces was at some time either when the Bill was being considered by Parliament, or immediately after the Bill has reached the Statute Book, and I have always had in mind that, if the report was then such as to make it clear

that the autonomous Provinces and the Federal Government could not be started for a long or an indefinite period that was the occasion at which we would call our Indian friends into further consultation.

7595. Will you turn to Proposal 18, page 41? Would you kindly explain what exactly is meant by Clause (b), which is "the safeguarding of the financial stability and credit of the Federation"?—This surely must be a question for the financial discussion next week, must it not, and I thought this was going to be one of the kind of questions with which we should very much be dealing next week.

7596. If I am not here Mr. Jayaker will probably put to you that question?—Yes.

Sir Tej Bahadur Sapru.] Then I will pass on to another subject. In the course of your statement you said the other day, explaining the relations of the two Houses—

Marquess of Salisbury.] Are you passing from the financial point?

Sir Tej Bahadur Sapru.] I am leaving that, and I am coming to another aspect of the question.

Marquess of Salisbury.

7597. May I then put this question, if I am allowed to, to the Secretary of State? We have listened with the greatest interest to his very carefully stated views, but he will, I am sure, himself recognise that those are the views of His Majesty's Government, and not necessarily the views of the Committee?—I have never for a moment pretended to express the noble Lord's views.

7598. I meant it quite respectfully. I only wanted to prevent a misunderstanding?—I should have thought no misunderstanding could arise.

Lord Rankeillour.] I thought we were having a discussion first solely on the transitory provision and you were going to have a round of questions on that, but you are going apparently to much wider matters.

Chairman.] I was waiting to see what Sir Tej was going to broach before I reminded him of the same fact. Sir Tej will have on mind that by arrangement

to-day we deal only with transitory provisions, and if Sir Tej is going to leave that matter I propose to have a round of questions. If I understand Sir Tej's intentions aright, he should leave these matters till a later stage.

Sir Tej Bahadur Sapru.] I have one question to put about Proposal 202.

Mr. Rangaswami Iyenger.

7599. I have a supplementary question arising out of the answer to Sir Tej. As I understood you, Sir Samuel Hoare, when you said that in regard to the calling into conference of representative Indian opinion when, all other conditions having been satisfied, financial difficulties are in the way, I take it what is meant is that, so far as you are concerned, the proposals in regard to the Federation Act will go forward in the definite expectation that these conditions will be satisfied, and that when the Federation Act is put on the Statute Book the question whether it could not come into operation owing to financial or other causes would then arise for discussion, and, if it does arise, then you would call a conference of Indian opinion?—I would prefer to leave my answer as I stated it. I think I made the position clear. I am contemplating (that is supposing the Joint Select Committee and Parliament agree) going ahead with a comprehensive Bill covering the whole field of Indian Government. If in the respect that I have just described there appears to be a likelihood of indefinite delay, then I gave last winter, and I repeat it now, on behalf of the Government, a statement that we would in those circumstances take into consultation once again our Indian friends.

Sir Tej Bahadur Sapru.

7600. Coming to Proposal 202, may I put to you questions in a very general form: Is not the scheme of your White Paper this, that the Bill will be divided into two parts, say, Part I dealing with the Centre, or the Federation, and Part II dealing with the Provinces; that Part II will be enforced first, and that Part I will remain in suspense until the necessary conditions are fulfilled for enforcing it. Is not that the whole scheme?

—It is not a complete picture of the scheme? Sir Tej will see that all parts of the Bill will be dependent upon certain conditions: For instance, the financial considerations to which I have drawn attention. Subject to that his description appears to me to be an accurate description of the kind of proposals, that if one is still in office, and if the Committee agrees, and so on, we should make to Parliament.

7601. During the period between the passing of the Act and the setting up of provincial autonomy, and the date when you may consider it necessary or desirable to establish Federation under the Constitution passed by Parliament, I suppose your idea is that the present form of Government of India should remain with as little changes as may be possible?—Yes.

7602. That is your general idea?—That is my general idea.

7603. With regard to the Legislature which will be in existence during this period, will you have the official *bloc* at all in the Legislature, or the same strength of the official *bloc*?—We should go on exactly the same in the transitory period; that is my idea.

7604. In the transitory period?—Yes.

7605. The changes being only confined to readjustment of the relations of the Government of India to the Provinces which have become autonomous?—Yes.

7606. That would necessarily imply that in regard to matters of law and order, or in regard to financial control, the control of the Governor-General and the Secretary of State will, to that extent disappear?—To that extent it will be altered. I should not like to use offhand the word "disappear."

7607. If the Provinces become autonomous?—Yes.

7608. Within the limits of the Constitution, the Secretary of State and the Governor-General will not have any power of interference with the Constitution?—Within the sphere of the Autonomous Provinces, subject, of course, to the field of special responsibilities.

7609. And to that extent necessarily the Constitution of the Executive Government of India will change?—To that extent.

7610. Take, for instance, the Member in charge of Education and Revenue. Education and Revenue becoming Provincial subjects, there will be practically nothing to do for the Member in charge of Education and Land Revenue?—I think it is quite clear that in the transitory period there will have to be a re-grouping of the Viceroy's Members of the Council.

7611. Take the period with which I am dealing now. During this period, will you insist upon the Local Legislatures of the Autonomous Provinces asking for the previous assent of the Governor-General in regard to some kind of Legislation for which it is necessary now?—No, only so far as is provided in the White Paper, namely, in the Autonomous field of the Provinces we should not contemplate its being exercised. (Sir *Findlater Stewart*.) In so far as this White Paper would demand previous sanction if the Federation were in being, it will require previous sanction of the Governor-General in the interim period, but no more than that.

7612-3. How will that affect the question of concurrent powers?—I am talking only of the transitory period during which Provincial Autonomy has come into existence, but the Centre has not been changed into a Federation. That may give rise to very serious Legislative conflict?—I have no doubt we shall have to look into that. The thing will have to be adjusted on the basis that the Secretary of State has explained. The changes are only to be the minimum changes consistent with the setting up of Provincial Autonomies.

7614. May I say that I am not suggesting that the thing is impossible. Readjustments will have to be made, but I am afraid the White Paper does not go into those questions?—(Sir *Samuel Hoare*.) No, and I admit, quite frankly, that the White Paper does not go into those details, but it is not that we have ignored them. We see that there will have to be readjustments both within the Viceroy's Council of duties, and there will also have to be adjustments of the Legislative competence.

7615. The readjustments will comprise three fields as I can foresee, legislative, administrative and financial?—Yes.

Marquess of *Reading*.

7616. I almost apologise for the only question I have to put: It is not because of the want of lucidity of your answers, but because I have not always followed the questions that have been put to you. Am I right in this? I am only trying to put the substance of what I understand to be your statement, whatever the question. The transitory provisions are only applicable—those in paragraph 202, during the time that the Constitution as a whole comes into being. Those transitory provisions are merely for the purpose of carrying on during the time before the Constitution as a whole comes into being. That is right, is it not?—Yes, that is so.

7617. The only other question I want to put—I am only trying to see that, at any rate, I have got the answer to some of those questions clear, is this. What you are saying quite generally—not attempting to do more than summarise generally—is that it will be necessary to make some adjustments for the purpose of carrying into effect Provincial Autonomy—some adjustments in the Central Government?—Yes.

7618. Whatever those are, they are not dealt with in detail in the White Paper, but they are left to be dealt with as and when the case arises, and when you have got Provincial Autonomy in operation and pending the time that the whole Constitution comes into being. Is that not right?—To this extent: It is quite correct, so far as the White Paper goes, but I think it will be found that in the Constitution Act we must deal with them in greater detail.

Lord *Rankeillour*.

7619. I will not trouble you very much Secretary of State, in a great number of Acts of Parliament there are two dates, are there not, there is the date of passing, and the date of commencement?—Yes.

7620. And very often there is a different date of commencement for different parts of the Act?—Yes.

7621. With regard to Provincial Autonomy itself, will you put in a date of commencement for that?—No; I should



not put in a date, neither for one nor the other.

7622. You would put in a date for the operation of Provincial Autonomy?—No; I was assuming that no date would be put in, for very much the same reasons that I said that no date could be put in for the Federation, namely, these uncertain factors, particularly the uncertain factor of Finance.

7623. But then, obviously, it cannot come to pass on the date of passing immediately. You will have to reserve some powers by Proclamation, or otherwise, for it to come about?—Exactly. I should reserve power either by Proclamation or by Order in Council.

7624. Would the Proclamation for that be subject to any Parliamentary review?—I have contemplated the Proclamation for the Federation.

7625. But you now say it is uncertain when the first stage will actually take effect, the granting of Provincial Autonomy. Will you take some power, for instance, to call the Chambers together at a certain time to prepare the Rolls, and so on?—Yes, certainly, some power must be taken. Exactly what that power is, I have not formed a final opinion upon.

7626. But there will have to be something of the sort in the Act?—Certainly.

7627. And that, especially in view of the fact that the Provincial control, Provincially as well as Federally, is uncertain?—From the point of view that I have just stated, yes.

7628. May I ask you this: From the moment that Provincial Autonomy is set up, will the division of the powers in Appendix VI automatically come about?—Yes.

7629. And from that moment, the Federal Government, which will *ex hypothesi* still be in its present state, will have those powers and no more, and the Provinces will have the other powers therein set out?—Substantially so, yes.

7630. And if there is anything that has been omitted, who will have the residual powers?—The position will be as stated in the Appendices.

7631. It does not quite clearly state what will be the residual powers, but,

for the time being, will the Central Government have them?—It will be presumably for the Governor-General to decide whether it should be the Centre or, whether it should be the Provinces which should legislate.

Lord *Eustace Percy*.

7632. I would just like to ask one question, Secretary of State. Most of the questions put to you have been on the assumption that the date between the passing of the Act and the establishment of Provincial Autonomy will be quite short, but the interval between that and the establishment of the Federation may be rather long. Is it not the fact that so far as Finance is concerned, if there is any delay at all, the delay between the passing of the Act and the establishment of Provincial Autonomy is likely to be much longer than the interval between the establishment of Provincial Autonomy and the Federation—I say, so far as the financial factor is concerned?—It was with that point that I attempted to deal at the end of my statement, namely, to emphasise the fact that I emphasised the other day, that the financial problem is as great a problem, if not a greater problem, for the Provinces than it is for the Federal Centre.

Marquess of *Salisbury*.

7633. I should just like to clear up a little point about this bringing into operation of the White Paper scheme by proclamation. We are all well aware that at the top of page 9 of the White Paper it is provided, or rather it is the intention of the Government, that Federation should be brought into being by Royal Proclamation at a certain point, but in the White Paper I do not think there is any corresponding provision in the case of Provincial autonomy. May I take it, that when the White Paper was drafted, it was not anticipated that there would be delay in bringing out Provincial autonomy—that that has emerged since?—No; we have always had these difficulties in mind.

7634. Then why is there no provision for it?—We had held the view that Parliament would certainly require—so we thought—a very formal and ceremonial

procedure, like a proclamation, for the bringing into being of the Federation. We were not equally clear that that procedure would be necessitated for the bringing into operation of the Provinces. That seems to me to be essentially a question for discussion. The alternative would be some other expedient; namely, an Order in Council, or something of that kind.

Marquess of *Salisbury*.] I have no other questions to put.

Lord *Hutchison of Montrose*.

7635. With regard to the foundation of the Federation when the Princes come in to the Federation, have you at the present moment in your mind, or is it laid down in writing anywhere, the conditions which the Government think ought to be fulfilled in relation to the subjects which are to be handed over to the Federation by the Princes?—Yes; we have had a good many discussions on the subject, both at the Round Table Conferences and in the discussions that have taken place in India.

7636. In relation to that, has there been any touch with the Princes on the financial side?—I am not quite clear what Lord *Hutchison* means by that.

7637. To what extent the Federal Government will have power, other than the ordinary Customs duties, in relation to contributions to the Federal Government by the Princes?—We have had almost continuous discussions with the Princes upon that subject.

Sir *Phiroze Sethna*.

7638. Just one question. Secretary of State, what is proposed in regard to your Council here during the transitory period? Is there to be any change or is it to be just the same?—Exactly as it is now.

7639. If there are any vacancies during the transitory period, do you propose to fill them up?—The Secretary of State would have to use his discretion. I think that would depend very much upon whether it looked as if the period was going to be a long one. I can quite imagine if the period looked to be a short one he certainly would not fill up an appointment.

Sir *Abdur Rahim*.

7640. I wish to put one question. I think, Secretary of State, you have made it quite clear to us that the transitory period will last so long as provincial autonomy does not become financially possible? Is that not so?—No, not at all.

7641. That is to say, the Act will not come into operation?—That is another proposition altogether, though, is it not? There would be no transitory period at all if the Act did not come into operation.

7642. The Act would not come into operation until provincial autonomy becomes financially possible. Is that not so?—Yes, I think that is so.

7643. And that, I take it, mainly depends upon world economic conditions?—Yes, to some extent. I hoped I had dealt with that the other day when I made my comments upon Sir *Malcolm Hailey's* Paper.

7644. But I mean is that not really the general position, that it will largely depend upon improvement in the world economic conditions?—I would rather not use adverbs or adjectives. I would certainly say that this is a very material factor in the problem.

Mr. *M. R. Jayaker*.

7645. May I put one question? I am speaking about those subjects, Sir *Samuel*, which are at present reserved in the Provinces, such as Law and Order, and which will be transferred to popular control under provincial autonomy. What will happen to those subjects at the Centre? Will the portfolios of Law and Order at the Centre cease to exist, or will they be converted into co-ordinating machinery? What is within your contemplation? Have I made any question clear?—Yes.

Sir *Austen Chamberlain*.] May I ask, does the question refer to the transitory period?

Mr. *M. R. Jayaker*.

7646. I am speaking of the transitory period, yes?—It would mean a readjustment of the portfolios, and in actual practice, if a portfolio of that kind continued, it would be substantially

modified as a result of the transfer of Law and Order in the Provinces.

7647. But it is likely that its only function will be to co-ordinate Law and Order in the several provinces?—I would not like to say yes to a question of that kind offhand. There may be other duties. I think I would prefer to consider the picture in rather more detail before I give a general answer to it.

7648. But you will have to make the position at the Centre with reference to these provinces in strict conformity with provincial autonomy?—Yes.

*Mr. Zafrulla Khan.*

7649. Just one question, or rather a suggestion which I wish to make to the Secretary of State arising out of the financial position referred to. I do not suppose there can be any doubt that with regard to this part of the question some help may also be derived from a readjustment of the financial expenditure into which some of the provinces are looking; for instance, in the scales of salaries for new entrants to the provincial services and other things. If relief came in that way, that would no doubt also be taken into account?—Yes; and I should like any answers I have given on the subject of finance to-day to be interpreted in the light of the statement I made in my comment upon Sir Malcolm Hailey's Paper. I made it clear in that statement that I thought there still are fields of economy to be worked upon in the provinces.

*Sir P. Pattani.*

7650. I want to put a question or two to the Secretary of State. As I understand from the answers given here, there are four main points on which hinges the fate of the future Federation; namely, the establishment of a Reserve Bank; the solution of the financial difficulty; the accession of the States, and, lastly, the facility for the provincial legislatures to elect members for the central legislature. Supposing that the first two, namely, the Reserve Bank is satisfactorily settled and the financial question is also satisfactorily settled, then I take it that it will be only the question

of the accession of the Princes that will be in the way. If it takes a year, and it is expected that it will not take more than that, then the Federation will be delayed only for that period which would require transitory provisions. One can quite understand the transitory provisions from that point of view, because it would be a long period during which administration will have to be re-shaped at the Centre. But the fourth point, namely, the capacity of the provincial legislatures to elect members to the Legislature need not delay federation being established at the Centre, because as soon as the provincial legislatures are elected and come into being they can go straight on towards electing members for the Central Legislature; and during the time of the election the Centre may go on functioning as it does at present on the analogy of a Ministry of a dissolved House of Commons functioning until the new Parliament comes into being. Is that the right view to take, Sir Samuel?—I think, generally, it is. It is very difficult for me to say yes or no explicitly to a rather long statement, but I do not think there is any disagreement as far as I can judge, following what Sir Prabashankar Pattani said, between him and me.

7651. In that event, supposing that there is a transitory period intervening between the grant of Provincial Autonomy and the establishment of the Central responsible Government, would it be possible, in view of the financial difficulty, the accession difficulty and the Reserve Bank difficulty, to have the Provincial Legislatures after Autonomy is established to elect Members for the Central Legislature who will form the Central Legislature as is described in the White Paper, who will function as the Governor-General's Council, as the Assembly functions at present, shorn of the power of Central responsibility granted to them?—Sir Prabashankar Pattani is making an alternative proposal to ours, and a proposal that I do not think is as good as ours. His proposal is to make a very material change in the Central Government in the transitory period. Ours is that it would be a mistake to make changes of that kind, and I hope I have made these reasons clear this afternoon.

7652. I want to make this one thing clear, that there is to be no Central responsibility in spite of the Provincial Councils electing Members to the Centre under the new scheme, and the Governor-General will go on functioning, as he does at present. But the advantage of my humble suggestion is that India will realise that there is a real desire to find a solution which is not left to be decided upon after the transitory period is over, but a scheme set down from now which they will hope will come into being as soon as certain conditions are fulfilled. It is from this point of view that I am making this humble suggestion. And there is another reason why I make it. Supposing we on problematical points pass an Act in the House of Parliament granting Autonomy in the Provinces but leaving the future Central responsibility dependent upon certain conditions, and, supposing those conditions come into being after four or five years, it may be very dangerous to find then conditions to which a Constitution that we may set up may fit in. Therefore, I very humbly suggest that it would be very dangerous to set up a Constitution from now which has to come into functional attitude after several years when conditions both here and in India may change. It is only from these two points of view that I am making this humble suggestion. Make a start which may give a great hope to India that there is really a way opened out as soon as certain difficulties that are in the way are cleared up. Beyond that, I have nothing to say?—Sir Prabashankar Pattani has expressed one point of view. The Committee, however, ought to remember the other point of view, that so far as my information goes, it is held by a large number of Indians, namely, the more permanent you make the transitory period appear, the more likely it is to become a permanent and not a transitory period.

7653. Then one other point I should like to know is this: There is a fear in which I do not share, that if the Autonomy precedes Central responsibility, it may happen that the Autonomous Provinces may refuse to come into the Federation when their opinion is asked after several years?—I really do not know what Sir Prabashankar means by that. The Provinces will not be asked whether

they are coming in or not. The Provinces will have to come into the Federation under the Constitution Act.

7654. It is from that point of view that I was going to suggest that I hope it may be possible to set down in the scheme that no Provinces will have the option of refusing to come in as soon as the conditions for Federation are established?—We have never at any period of any Round Table Conference, as far as I can recollect or in any Committee ever contemplated such an option.

Sir *P. Pattani*.] I was only suggesting that although the fear is one which I do not share, there does exist a fear, and it would be well, therefore, to have a provision in the Constitution itself that after Autonomy in the Provinces is established, no Province shall be at liberty to refuse to come in directly other conditions are fulfilled.

Mr. *Zafrulla Khan*.] How can the Provinces refuse either constitutionally or legally or in any other way whatever? The Act will be enforced.

Sir *P. Pattani*.] If it is an Act, yes. Then there is one small point with regard to the Accession of the Indian Princes. The reference is paragraph 12 of the Introduction, the last four lines: "the condition to be satisfied before the Federal Constitution is brought into operation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber"—I should like to know what the meaning of the word "seats" is? Does it mean half the number of the Sovereign States, or does it mean half the number of the votes in the Legislature? I ask this question, because if "seats" means the number of votes, with the principle of multiple votes, plurality of votes, fewer States might take a part in the number of seats and the majority of the Sovereign States may remain outside. Therefore, I would request if it is not possible to say half the number of seats and half the number of Sovereign States.

Sir *Mirza Ismail*.] That would not be at all acceptable.

Sir *P. Pattani*.] I want to make it quite clear.

*Witness.*] "Seats" means votes.

7655. Will that not bring about this difficulty, that fewer States might make up more than half the number of votes, whereas the greater number of Sovereign States may have to remain outside. That is why I say it should be the number rather than the plurality of votes?—It is impossible really to give an answer to a question of that kind until we know what is to be the voting strength of the States.

7656. Exactly; I quite agree there; but considering that the view has been expressed that the votes may depend upon the number of gun salutes, I think it may be possible that the question of guns brings in the element of patronage and guns were settled in the olden days when the British Government was really collecting strength from States which came into alliance, and States which came in later got a lesser number of guns in spite of their importance being historically greater than those which came in first. It is from that aspect that I suggest it should be carefully considered, that guns alone should not be the criterion?—Nobody has ever suggested that guns alone should be the criterion.

*Sir Manubhai N. Mehta.*] The Secretary of State said this morning that the transitory period will depend upon two factors: the solution of the financial difficulties and, secondly, the Accession of the States. As regards the financial problem, we shall take it up very likely on Thursday when we take up the whole financial position, and on behalf of the States a statement will be made, I hope, that day about the financial arrangements. As regards the Accession of the States, I will pursue the point taken by *Sir Prabashankar Pattani*. The present arrangement is as provided by Section 4 of the White Paper and paragraph 12 of the Introduction, that a Federation will be considered to have been set up if 51 per cent. of the population and 51 per cent. of the seats—that is votes—assigned to them in the Upper Chamber accede to the proposed Federation. I want to draw the Secretary of State's attention to this fact that the 51 per cent. of seats provision adds uncertainty to our view at present. We do not know what will be the allocation of seats, so it is difficult for us at present to say when

this 51 per cent. of the seats allocated will be filled up. That is one consideration. Secondly, I want to invite the attention of the Secretary of State to the fact that some States may be in a state of minority and according to the proposed arrangements, minor States or States under minority administration will be disqualified from coming into the Federation. At a time it is not difficult to imagine that many or several States may be in a condition of minority or under minority administration. I would remind the Secretary of State that about four years ago important States like Gwalior, Travancore, Jaypur, Bhavnagar and Cooch Behar—states with large populations—and possibly with a large number of seats—were under minority administration. Even now about 25 States are under minority administration, and if they are disqualified we do not know at any particular time what States would be disqualified, and therefore it is another factor of uncertainty. In this connection I would remind the Committee, as well as the Secretary of State, of a discussion that took place at the Second Session of the Round Table Conference, on the 23rd of September, 1931—the proceedings of the Second Federal Structure Sub-Committee. The Secretary of State, *Sir Samuel Hoare*, then said: "When I say an effective All-India Federation I mean a Federation that is based, first of all, upon a definitely Federal foundation and I mean, secondly, a Federation with definitely Federal organs to carry out its duties. I do not now wish to go into details upon these two main conditions. During the course of our discussions we shall have ample opportunity of discussing the details that arise in connection with them. To-day I would only say in a sentence, taking up in particular the point of view expressed by the Princes this morning, that I do regard as one of the conditions of an effective All-India Federation a sufficient participation of the Princes. Here and now I do not want to be drawn into a controversy about numbers. I would much rather hear the views of gentlemen around the table upon that very important point, but I should like to make it clear that, so far as my own views are concerned, I do really regard an effective participation of the Princes

at a reasonably early date as one of the basic conditions of the constitution that we are discussing. If I might make nothing more than an *obiter dictum* to-day. I would venture to say that it seems to me personally that the 51 per cent. of the population, the test suggested by Sir Akbar Hydari, is not a very full representation of the Princes. I do not wish to say any more than that to-day."

Lord *Hardinge of Penshurst.*] Who said that ?

Sir *Manubhai N. Mehta.*] Sir Samuel Hoare.

*Witness.*] A very good speech. I agree entirely with it, and it is because of that that I put in the provision about seats.

7657. The same uncertainty remains. We do not know what will be the allocation of the seats, and I added the second uncertainty about the minority administrations. The minority administrations must be free to come into Federation if it is to their advantage as we all believe it will be to their advantage to come into the Federation, and trustees for the benefit of the minority administration ought to be free to come into the Federation ?—Is this a question ?

7658. This morning we departed from questions. I will ask it in question form. Would you believe it to be more in the interests of minority administration that they should be free to come into the Federation ?—Sir *Manubhai* has raised an important question and a question that we have very fully considered. We have been advised that there can be no question of bringing a minority State, as such, into the Federation. It would be quite contrary to all the constitutional law and usage that has grown up in our relations with minority States and, although we sympathise very much with the point of view that he has just expressed, we have found that constitutionally it is quite impossible. That being so, I have always thought myself that we might get round the difficulty, assuming there is some weightage given to the Princes before the whole hundred per cent. come into the Federation, by using a portion of that weightage for representing the minority States, and I think Sir *Manubhai Mehta* will find that constitutionally that is the only way to do it.

7659. I would only point out one more difficulty. Would the Secretary of State realize the fact that as he said the other day, in the case of future accessions, the conditions of accession may have to be fixed, not only by the paramount power of the Crown, but also by an existing Federal Government ? Suppose those conditions are likely to be a little more onerous than they are to-day, then would not the minority administrations have reason to grumble that they had lost the opportunity of entering at a time when easier conditions would have been offered to them ?—I am afraid there is no constitutional way round this difficulty other than that that I have just explained. We have made many inquiries as to the views of the Princes themselves in India, and we find that, anyhow amongst certain of them, there would be very grave objection to our taking such action on behalf of a minority State.

*Sir Austen Chamberlain.*

7660. May I interpose a question ? Could the Secretary of State consider an alternative which has not yet been mentioned, namely, that in the case of a State which was in minority at the time of the coming into force of the Constitution its rights should be reserved to enter on the basis then in force until the Ruler came to his majority, and for such time after as was necessary to give him time to consider ?—Sir *Austen Chamberlain* seems to have made a very valuable suggestion. I think we ought to take it into account.

Sir *Manubhai N. Mehta.*] It is a valuable suggestion.

Sir *P. Pattani.*] As one who has run a minority administration for 13 years I am bound to say I am against the proposal of minor estates being forced into Federation until the minor has come of age.

Sir *Manubhai N. Mehta.*] Now that the Secretary of State has offered this concession that, as regards the weightage to be given, this fact of minority administration will also be taken into consideration, I will reserve questions until we come to Federation.

*Mr. Y. Thombare.*

7661. There are at present certain agreements between States and Provin-

cial Governments, and it may be that a portion of the period covered by them may be unexpired on the date on which the Provinces may be started on autonomy. What would be the position as regards those agreements? Will the Provincial Governments be in the position of agents of the Central Government in that respect or will that be taken into consideration?—Our intention would be to make arrangements of the kind run on.

7662. Will the Provincial Governments be looked upon during the transitory period as agents of the Central Government with regard to the execution of agreements?—I think, as a matter of fact, it would be the Governor and the Governor-General who would protect those interests, but anyhow we would see that those interests were protected.

Sir Akbar Hydari.] I presume that we are now discussing only that particular paragraph 202 of the White Paper?

Chairman.] Yes.

Sir Akbar Hydari.] I have no questions to ask on that. My question will relate to the part when we are dealing with Federation because I have not had an opportunity of asking questions under that heading. Is not that so?

Chairman.] That is so.

Sir Akbar Hydari.] Also one other question as stated by Sir Manubhai with regard to transitory provisions. The financial aspect was one of the considerations which was given by the Secretary of State as possibly delaying Provincial autonomy. With regard to that you will remember that we promised on behalf of the States some declaration as to what our position was when we discussed Sir Malcolm Hailey's Memorandum, and I was asked to state what that position was. I will make that declaration when we take up the financial discussion.

Mr. N. M. Joshi.] May I ask a question of Sir Samuel Hoare about the representation of labour in the Upper Chambers?

Mr. Zafrulla Khan.] Is that on franchise or on federation?

Mr. N. M. Joshi.] I am not going into the details of the franchise.

Mr. Zafrulla Khan.] I am not objecting to anything Mr. Joshi said. I want

to know whether we are on the first part of our two subjects, or on the second?

Chairman.] We are now reverting to No. 2 on our order, Federation.

Mr. N. M. Joshi.] In view of the fact that the franchise question is not likely to come up at all during this Session, may I be permitted to ask one or two questions, not on the details at all, but of constitutional importance about federation?

Chairman.] I think on the whole that it would be well if the Committee and Delegates allowed themselves the liberty of dealing with the Constitutional aspect of the composition of the Houses during this examination. I think there are several members who have not had an adequate opportunity of putting questions on that. I should hope, however, that the Committee and Delegates would agree to avoid the more detailed question of franchise, because it is clear that we cannot altogether conclude these matters. Mr. Joshi no doubt will see that he does not allow himself to slip into the interesting and complicated matter of the franchise in detail.

Mr. N. M. Joshi.

7663. My question is this: Are you not providing for any special representation for labour in the Upper Chambers either Federal or Provincial? You have provided for special representation of those interests which are not likely to secure representation in the Upper Chamber by the method of election through the Provincial representatives. I want to draw your attention to the fact that labour is not likely to secure representation in the Upper Chamber through special Labour representatives in the Provincial Chambers. You will see that in no province there are sufficient special Labour seats which will enable them to secure even one seat in the Upper Chamber. Last time when questions were asked on this point it was suggested that the depressed class seats may be of some use in this respect. As regards that point I want to draw your attention to this fact that the depressed class representatives will have to belong to the depressed classes themselves and, considering that fact, I want to ask you whether you are aware that under the present circum-

stances for some years to come there will be very few members of the depressed classes who will be able to represent Labour interests in the Upper Chamber. I may draw your attention to this fact that, excepting our colleague, Dr. Ambedkar, I know of no other man belonging to the depressed classes who can defend Labour interests in the Upper Chamber as against the able representatives of the industrial and commercial interests. I want your views on this point, Sir Samuel Hoare?—Would Mr. Joshi put it in the form of a question? It is so difficult, if somebody makes a long speech, for me to know what to say.

7664. My question is this: Is it your information that among the depressed classes there are a sufficient number of people who will have the ability to defend special labour interests in the Upper Chamber if we depend upon the depressed class representatives to defend the Labour interests?—Supposing there were not a sufficient number of suitable depressed class candidates, the depressed classes could elect somebody else if they wished from the Provincial Councils.

7665. The depressed classes will naturally want to have their own men?—Yes, but Mr. Joshi's argument was that they could not produce anybody who was capable of representing Labour interests. They can elect anybody they like.

7666. The depressed classes, in the first place, would like to have their own men. They are elected by a depressed class constituency, and on account of the fact that they are elected by a depressed class constituency they will naturally prefer to have a depressed class man. If Sir Samuel is not willing to reply to that question?—I do protest against that observation. I am willing to reply to every question that is asked me. Mr. Joshi will see, when he reads the shorthand notes of what he has been saying, that he has not got near asking me a question of any kind. If he will ask me a question I will answer it.

7667. My question was: How do you expect the depressed class representatives to elect men who will represent Labour interests? That is my question?—I would have thought (I speak subject to correction) that the depressed classes were essentially of the labouring class,

and they were very likely to elect somebody of the type contemplated.

Mr. N. M. Joshi.] Will the depressed classes not like, when they are asked to elect members, to elect members from their own class?

Mr. Zafrulla Khan.] Will those members who are elected from among the depressed classes be able to defend the depressed classes interests in the Upper Chamber?

Mr. N. M. Joshi.] That is not my business.

Mr. Zafrulla Khan.] What is your expectation?

Mr. N. M. Joshi.

7668. If you ask me that question I shall say that many of them will not be able to do it, but at the same time, that is not my business. My question to the Secretary of State is that as far as his knowledge of the present intellectual position of the Depressed Classes goes, does he expect the Depressed Classes representative to be of any use for the working classes in the Upper Chamber?—My answer would be yes; I do expect that it will be of use to them; but I think it would probably be better if Mr. Joshi would put that question to Dr. Ambedkar.

7669. May I ask a second question on that point? Will the Secretary of State explain why when he gives a special kind of election to Europeans, Anglo-Indians and Christians, he is not prepared to make the same concession to Labour?—We have never regarded Labour as a community within the meaning of the word "community" in India.

7670. May I ask you then to explain why you consider it to be absolutely necessary that there should be representation of communities and not of interests?—This is a very wide question. Lord Lothian's Committee took the view that interests should be represented in the Lower Chamber, but not in the Upper Chamber. I have accepted that view.

7671. But what were the reasons for that view?—If Mr. Joshi will look at Lord Lothian's Committee's Report, he will find the reasons set out at length.



7672. I have not yet seen any reasons there ; that is why I am asking you, Sir Samuel Hoare. May I ask only one question as regards the Franchise, and that question is about wage earning as a qualification. It was suggested that it was difficult to find out what the actual wage of a man is. If I tell you that there are certain classes of people whose wages it is not difficult to find, will you include wage earning as a qualification for that class ? The classes, in my view, are those workers who work in what are called organised industries ?—No. I am afraid we came to the view that we did not regard it as a practicable proposition. Sir John Kerr yesterday gave very conclusive reasons against taking wage earning as a qualification in the country. He did admit that it might be more possible to apply the test in the towns ; but whether that be so or not, we do not think that we could isolate the two sides of the problem, and we do not think, therefore, that it is a suitable test for the Franchise.

Mr. N. M. Joshi.] May I ask what is your objection to the isolation ?

Chairman.] That was one question quite outside our rule, Mr. Joshi ; a great concession. I think I should have it on my conscience if I allowed you to commit a second offence.

Mr. N. M. Joshi.

7673. Very well. In replying to my question, Sir Samuel Hoare, about the right given to subjects of Indian States for provincial elections, and when I asked you whether a similar right could be secured for British Indians in Indian States, you gave me a reply that you did not like to make any kind of interference in the internal affairs of the Indian States. My question to you is this : When two countries make a treaty of reciprocity on any subject, is it contended that the two countries have a right to interfere in the internal affairs of the other country ? Take, for instance, a treaty of reciprocity between one country and another as regards tariffs : it does not mean that because there is a treaty of reciprocity one country interferes with the internal affairs of the other country. Do you consider, when

that proposal is made to you, that if any rights are secured to subjects of the Indian States similar rights should be secured to British Indians in the States by means of treaties ?—I could give a number of answers to a general question of that kind, but I think perhaps it is sufficient to say that if we made it a condition that we should have these powers of interference and intervention in Indian States, we should not have an All-India Federation at all. No Princes or no States would enter the Federation.

Chairman.

7674. I propose now to adjourn the hearing of the evidence of the Secretary of State on the matter of Federation. Secretary of State. I understand that, before the adjournment, you desire to make a statement which is to go upon the Note ?—Yes, my Lord Chairman. It is a very short statement. I wanted to say a word or two to the Committee and the Delegates about the position with Burma. The position in a sentence or two is this :

The Government are not at the present time in a position to make a definite recommendation to the Joint Select Committee upon the subject of the separation of Burma, though we should hope to be in a position to do so, say in the early autumn. In the meanwhile it seemed to me to be the course that was best in the circumstances and most convenient to the Committee that I should circulate to the Committee a Memorandum pointing out what would be the constitutional position of Burma, if Burma were separated on the basis of the Prime Minister's statement. I am, therefore, proposing in the course of the next few days to circulate to the Joint Select Committee such a Memorandum. I am not asking them to take any decision upon the Memorandum ; neither am I asking them to discuss it at this stage at all. I am asking them to take it as one of the papers circulated to the Joint Select Committee for their consideration, and I would ask the Lord Chairman and the Committee to have a discussion as to what should be the best course to be taken with reference to Burma at some time early in the autumn.

7675. Of course, you would desire that the Delegates should have copies of the Memorandum?—Certainly; it is with that object that I am circulating it now.

Sir Austen Chamberlain.

7676. Is it to be circulated for confidential information or for publication?—It had better be circulated for publication.

(The Witnesses are directed to withdraw.)

Ordered, That the Committee be adjourned to Tuesday next, 10.30 o'clock.

25th July 1933.

Present :

Sir AUSTEN CHAMBERLAIN in the Chair.

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaqat Hayat Khan.  
Sir Akbar Hydari.  
Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
Sir P. Pattani.  
Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

His Highness The Aga Khan.  
Sir C. P. Ramaswami Aiyar.  
Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Mr. A. H. Ghuznavi.  
Lt.-Col Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.  
Begum Shah Nawaz.

Sir A. P. Patro.  
Sir Abdur Rahim.  
Sir Tej Bahadur Sapru.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Sir N. N. Sircar.  
Sir Purshotamdas Thakurdas.  
Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E. C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

Sir Austen Chamberlain.] My Lords the Begum Shah Nawaz to be allowed and Gentlemen, I have a request from to put four questions on the franchise.

I feel a great difficulty in departing from the programme which was set for to-day. I am afraid if we start again with the franchise it will not be confined to her four questions, but will spread to other matters, and I think I must continue with the programme as settled by the Lord Chairman.

Mr. Y. Thombare.

7677. Negotiation is going on at present with the Princes as regards the question of allocation of seats, so I am not going to put any questions which will prejudice the course of the negotiations, but there are obvious difficulties in the way. In case His Majesty's Government have to give the final decision, would they be pleased to consider, as has already perhaps been suggested, that the idea would be to maintain a balance between the larger States, the medium States, and the smaller States?—(Sir Samuel Hoare.) Yes, we should certainly desire to maintain that balance.

7678. In that case would Government be pleased to consider that there will be some States which will have a special advantage on account of blocks or two or more votes at their disposal, as they will be exercised solidly, unlike, perhaps, votes that may be assigned to the Provinces, and that the other States with only fractional representation will labour under a correspondingly heavy disability. Would Government be pleased to consider that?—I think we must certainly take a point of that kind into account. I would, however, add that I should have thought the smaller States would have had more influence than is suggested in the question from the very fact that there will be representation by groups, and I am assuming that, although a particular small State might not have individual representation, it might have effective representation from the other members of the group with which it was working.

7679. The White Paper proposes that the Governor-General in his discretion should nominate representatives from the States?—No.

7680. There are ten seats altogether to which nominations will be made by the Governor-General in his discretion

as regards the Upper House?—Yes, I was not quite sure to what point Mr. Thombare was referring. That is so.

7681. Perhaps four of these seats will be from the States. Would not that disturb the balance that His Majesty's Government may have in the allocation of seats, because it will give four out of the 546 States a greater representation than is given to the remaining States?—No; I would have thought it would have worked the other way. It would be possible on occasion to use this small number of nominated seats as a means of redressing the balance, and I think myself the Governor-General, both in the case of British India and in the case of the Indian States, would take that into account in making his nominations.

7682. It would be open then to the Governor-General to take into account the need of redressing the balance in the case of States with only fractional representation?—Yes, certainly.

7683. The White Paper gives Coorg one seat both in the Lower and in the Upper House, though it has a population of only 167,000 odd. Will Government be pleased to consider the applicability of the principle underlying it to the cases of the important small States—not the full one vote, but something?—Mr. Thombare's question raises a big issue. The very essence of grouping is that there is not an opportunity for the individual representation of all the States, and it would be difficult for me to give an answer to his question either Yes or No. without suggesting something that is not intended. Our intention is definitely a representation of these small States by groups.

7684. Provided it were practicable, would Government be pleased to consider that those States might have certain minimum representation, for instance, one seat amongst two States?—It all depends on the number of seats available and the method of allocation, and until those two factors are defined it is impossible for me to give a definite answer to the question.

Marquess of Salisbury.

7685. When does the Secretary of State think these two factors will be decided?—Of course, it rests very much with the Committee—the question of number in each Chamber—and as to the

allocation, I am pressing on with the negotiations as quickly as I can in India.

7686. It depends upon negotiations in India?—With the allocation I think it has always been clear that we are anxious, if we can, to obtain agreement among the Princes themselves, and we are still going on with negotiations to that end. I hope they will succeed.

*Mr. Y. Thombare.*

7687. In certain Federal Constitutions there is a limit put to the number of seats allowed to the most populous units, so that their representation is below what they would have according to the strict population ratio. The White Paper also gives a similar treatment to Bengal, Madras and the United Provinces. Would Government be pleased to consider the applicability of this principle to the case of the States so as to increase the weightage that can be given to the smaller States?—Here again my last answer applies equally to this question. These are matters for discussion and negotiation, and it is impossible while these two factors are undecided, namely, the number of States and the method of allocation, to give an explicit answer to a question of that kind, but, as I said at the beginning of my observations this morning, certainly we wish to carry with us not only the big States, not only the medium States, but the smaller States as well, and we have to take into account the three different points of view in the system of allocation upon which we are engaged.

*Sir Akbar Hydari.*

7688. May I ask one question with reference to that? On the same consideration I suppose you take into account the fact that the Central Provinces including Berar would have eight seats, and Sind and Orissa and the North-West Frontier Provinces would have five seats each, and, as Indian States are coming individually, Hyderabad, with a population as large as that of the Central Provinces, even if Berar is included, would have, according to the reasoning of Mr. Thombare, eight seats, and Mysore, at least five seats. You would have to take into account considerations of that kind also. I am not suggesting you should give me

a final answer, but I do suggest that that would be also a consideration?—It was just because of those facts that I gave the answer that I did give to Mr. Thombare. We are very conscious of these facts, and they are just the kind of facts that we are constantly considering in the discussions that we are having with the Princes.

*Mr. Y. Thombare.*

7689. For myself I have stated that the larger States, on account of the blocks of votes at their disposal, will have special influence. There is only one question more: On a scrutiny it appears that if States with a population of above five lakhs each are allowed to have one seat each in the Lower House for a unit of population of 500,000 subject to the variation that 2,000,000 should qualify for two seats, 3,000,000 for three, and so on, the Chamber States could have in some cases two seats for each three of them, and one seat for each two of them at the minimum. I do not want any final answer about it, but would Government be pleased to give their consideration to such a scheme of allocation of seats?—I think one has got to take into account factors other than the factor of mere population. The more I have been into this question of grouping the more clear I am that you cannot solve it as you would solve a mathematical sum. You have got to take a lot of issues into account. That is one further reason why I am very anxious that the States should settle it in agreement amongst themselves.

7690. My question was with regard to the Lower House, where population would be the basis in the main. There might be an augmentation of votes in some way or another so long as the full number of States were not entering into the Federation. Would an opportunity be taken in that case to consider the practicability of giving additional representation to States with only fractional representation?—I think that is one of several points that should be taken into account.

*Sir Manubhai N. Mehta.*

7691. May I request that, as we are dealing with Federation and the States have a very close and intimate concern with the question of Federation, I may

be allowed the latitude of extending my time by about a couple of minutes more ? I will first ask some questions regarding the strength of the two Federal Chambers. Secretary of State : May I inquire, is it not a fact that at each sitting of the Round Table Conference we have considered this question and have arrived at certain tentative conclusions ? For instance, at the first Round Table Conference, when we discussed the question, the conclusion arrived at was that the Lower Chamber should consist of 250 and the Upper Chamber of 100 to 150. At the Second Round Table Conference the question was discussed at length and the numbers arrived at were : Lower Chamber, 300 ; Upper Chamber, 200. Then the question was referred to the Franchise Committee. Lord Lothian's Committee recommended for the Lower House the total of 450. He did not recommend any change in the Upper House and that question was again discussed at Third Round Table Conference. As the result of the discussions at the Third Round Table Conference the numbers now recommended by the White Paper are 375 for the Lower House and 250 for the Upper House. Are these figures correct ? I believe they are correct ?—I think so. Certainly, the figures of the White Paper were correct.

Sir Akbar Hydari.] What was the result of the Third Round Table Conference ?

Sir Manubhai N. Mehta.

7692. I am asking that. In the Second Round Table Conference a decided opinion was expressed by the Princes that in the Lower House the numbers should not be less than 250. May I refer you to the remarks of the Princes and of Sir Akbar Hydari in the proceedings of the 23rd of September, 1931 ? May I say that Sir Akbar Hydari referred to the conclusions of the First Round Table Conference and said that the numbers were 250 in the Upper House and 100 to 150 in the Lower House ? Then he urged that the numbers might be small. The Maharaja of Bikaner said : " May I say that is an individual expression of opinion ; it is not made for the Princes. (Sir Akbar Hydari.) I have not given it as such ; I have said this is my strongly held view. But here again, if our

British-Indian colleagues all strongly feel that, in view of the increase in population as shown by the Census of 1931, some advance should be made upon these figures, I submit that the number of the Lower House should not be advanced beyond 350, and that then the figure for the Upper House should be not beyond 250." Is it not then correct for me to say that Sir Akbar Hydari at the Second Round Table Conference fixed the maximum number for the Upper House at 250 ?—I think that is a question you had better address to Sir Akbar Hydari.

Sir Manubhai N. Mehta.] I am referring to the Minutes.

Sir Austen Chamberlain.] Sir Manubhai, is not it possible to put your questions a little more shortly, without reading long extracts ? We are rather pressed for time.

Sir Manubhai N. Mehta.] Yes. I will only read one extract now, but the others will be short questions. Coming to the weightage question, I would remind the Secretary of State of his speech in the proceedings of that very date in 1931, and then I will ask my questions. " Then there was another detail," Sir Samuel Hoare said, " a very important detail, that was raised this morning, namely, this. Supposing a large number of Princes do not enter the Federation at once, what is to be their voting power until the full number enters ? I understood Mr. Sastri to say that he thought that the voting power should be strictly proportionate to the number of Princes actually in the Assembly at a given time. Now, that sounds all very well from a logical point of view, but we must remember this, that in creating this Federation we are bringing together two separate interests, and I myself can quite believe that the Princes would say themselves that they really would be placing themselves at an unfair disadvantage if they entered the Federation, even though it be in comparatively small numbers, without having an effective voting power. I venture, therefore, just to throw that out in the discussion as a word of general caution." As you said in reply to Lord Reading and in the course of examination, you were prepared to give some extra weightage to the Princes at the outset if they did not

join in sufficient numbers. According to the limits laid down by the White Paper, 51 per cent. was the minimum and at that strength the Princes would be entitled to only 20 per cent. The total strength allowed is 40 per cent. That means that with every 10 per cent. increase only four more votes would be given. May I inquire if you have thought out what would be the extra weightage that you would allow?—I would not myself go up to the full 100 per cent.

7693-4. May I inquire, in view of the difficulty I pointed out the other day about minority administrations, whether you would not be inclined to treat it more leniently and give it extra weightage on account of minority administrations?—I think one has to take the minority question into account. My own view would be that 100 per cent. weightage would be too much. As to the exact percentage below 100 per cent., I think that is a question for discussion. I have a rough view in my mind, but I would prefer to hear the views of the Committee before I expressed any final pronouncement upon it.

7695. One more question about weightage. Has the Secretary of State thought of giving this extra weightage on any uniform principle, either, say, that the extra weightage might be given to the smaller States, or might be given to larger States, on account of their population? Has any uniform principle been thought of?—Here, again, I have thought that, in the first instance, it is essentially a question for the Princes themselves. What I have in mind is nothing in the nature of an official block nominated by the Viceroy, but a strengthening of the States representation for the purposes for which the States enter the Federation. That seems to me to be essentially a case, in the first instance, for the Princes themselves, and I would welcome an expression of opinion from the Princes' representatives and from the Princes themselves as to how from their own point of view that weightage could best be made.

7696. That the Princes' representatives will consider and give. I will turn to

another point, and that is the permission, or rather the opportunity allowed for moving resolutions or questions in the Federal Legislature, with the permission of the Governor-General to ask questions regarding even non-Federal matters in the two Houses. In this connection, would the Secretary of State please look to the present provisions in the Indian Legislative Rules. There are two rules. The rules are: "Provided that no question shall be asked in regard to any of the following subjects, namely . . .

(ii) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief." May I ask if there is any reason why this privilege should be attenuated under the White Paper? Would it not be more pleasing to the Princes, and would it not induce the Princes to join if the present rule is adhered to instead of being changed?—I think substantially the existing position will continue. I think we have to take into account, with the institution of the Federation, the possibility of certain discussions being not only necessary, but being admitted to be necessary by everybody concerned. I have in mind particularly discussions concerning a British-Indian subject or a British-Indian Company; it is those kind of questions which we have in mind when we contemplate discussion about the affairs of the States. It is nothing more than that.

7697. May I ask if this formula be accepted, that where the Minister replying to these questions is responsible for the policy to be carried out, then the question may be allowed, but if it is purely regarding internal administration of the State, and the Minister is not responsible, questions or resolutions may not be allowed?—I feel we have got to look into this definition again. As at present advised, I do not want to cut out the possibility of the kind of discussions to which I have alluded.

7698. I ask you, may not the present rule be adhered to?—I am advised that under the present rule discussions of that kind would be cut out, and I think it would be a mistake, from every point of view, not only from the point of view

of British India, but from the point of view of the States, as well. I think we had better look into this definition further and try to meet the two points of view, namely, that we do not want discussions in the Federal Legislature upon questions which do not concern the Federation at all, namely, the internal affairs of the States ; but we do not want to cut out the kind of questions to which I have alluded, that is to say, questions concerning British subjects or British companies.

*Dr. B. R. Ambedkar.*

7699. May I say one thing, Sir Samuel. You said internal administration. That would mean internal administration, so far as it does not appertain to subjects which are Federal?—Exactly.

*Sir Manubhai N. Mehta.*

7700. I come now to the Federal subjects. Would the Secretary of State kindly tell me if the present arrangement by which the Federal subjects and their discussion as Central subjects are all grouped is quite satisfactory? The Princes do not like this present arrangement because the first 48 or 49 subjects in Appendix VI are really Federal, whilst the latter subjects, up to 63 from 49, they were inclined to regard as Central. Now, grouping them together under one head, is likely to give them a wrong impression, that they can deal even with the latter subjects which might become Federal? Would there be any objection to treating them or classifying them separately?—Sir Manubhai Mehta raises a question that we have discussed in some detail. It is not so much a question of principle as a question of Constitutional convenience. We have been informed by our expert advisers that judging by the experience of other Constitutions the fewer lists you have, the better. The more lists you have, the more opportunity there is for litigation, and for a "No-Man's Land" between the various lists. On that account, we have been very anxious to keep the lists as few as possible, and as simple as possible. It was upon that ground, chiefly, that we included all these Central Services, whether they are Federal or whether they are British-Indian Central

Services, in one list, drawing, however, a gap between the two, as Members of the Committee will see upon page 115, and realising the whole time that the Princes are, speaking generally, only contemplating coming in upon the first 48 subjects. That is the reason why we put these two chapters into one list.

7701. The gap intervening between the two is not quite explicable and understandable by people who do not know why they are so arranged. May I draw attention or recommend to the Secretary of State to adopt the principle which has been adopted in the German Constitution, by which subjects which are exclusively Federal are separated from subjects which are concurrent and those which are purely Provincial. That would be a much more intelligible arrangement, to which the Princes would have no objection. Would not that be preferable?—As I say, this is essentially a question for Constitutional experts. My expert advisers have been in favour of this single list. It is obviously a question that the Committee must consider, but let me again say it is not a question of principle ; it is a question of Constitutional convenience.

*Mr. Y. Thombare.*

7702. Could they amplify it in a subsequent note on the question of Constitutional convenience?—I will look into that suggestion.

*Marquess of Salisbury.*

7703. Might I just ask the Secretary of State about the gap in the list? He cannot very well reproduce the gap in the ultimate Act of Parliament ; there will have to be something done to mark the difference?—I think that is certainly so, but whether it should go to the length of having a separate list, I would not like now to express an opinion upon ; in fact, my advice is against a separate list at present.

*Sir Manubhai N. Mehta.*

7704. The Secretary of State is, of course, aware that the Princes are very solicitous about the sacredness of their Treaties. There is one section, 132, in the Government of India Act at present : "All treaties made by the East India Company, so far as they are in force at

the commencement of this Act, are binding on His Majesty." May I ask why such a section has not been repeated in the White Paper?—My answer, on the face of it, would be that it has no place in the White Paper, for the very simple reason that we do not regard questions of paramountcy as coming into the Federal Constitution at all.

7705. We have already once referred to the question of subjects to which they may agree to bring into Federation by treaty or otherwise. The Princes are apprehensive of this term "or otherwise." If some reference had been made to the Treaties in the White Paper, their minds would have been reassured. That is why I ask the Secretary of State, will it not be equally useful to bring such a provision about treaties into the White Paper?—No; I think myself it would be a great mistake, both from the point of view of the Indian Princes themselves and also from the point of view of the prerogative of the Crown. I think the much better course would be to meet Sir Manubhai Mehta's point by removing the words "or otherwise" from the proposals. I am informed that there is no need to retain them.

7706. One last question, and it is about Article 110 of the proposed White Paper: "It will be outside the competence of the Federal and of the Provincial Legislatures to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India." Is there any objection to bringing forward the relations or of the Princes under this section, so that it may be beyond the purview of the Federal Legislature ever to refer to these treaties or to change them?—Here again my answer is the same answer that I gave just now. We think it is much better from the point of view of the Princes to keep questions of this kind out of the Act. I think if they will consider the reactions of any other course, they will see that that is really the wisest course from our own point of view.

Nawab Sir *Liaquat Hayat-Khan*.

7707. Secretary of State, is it not contemplated under the White Paper scheme

that the contents of Federal jurisdiction with regard to the States would be expressly limited to subjects and powers specifically transferred under the Instruments of Accession, and that any additions thereto would be subject to subsequent agreements between the parties concerned. Is that the position taken up by the White Paper?—Yes, it is.

7708. Then proposals 11, 18 and 20 of the White Paper deal with the special powers of the Secretary of State and the Governor-General with regard to the Reserved Departments, and to their special responsibility with regard to Transferred Departments. Is it understood that the exercise of these powers so far as they affect the States will not override and will be subject to the existing treaties engagements on Sanads between the Crown and the States?—Yes, I think that is the case with this one reservation that no doubt is in Sir Liaquat's mind as well, except so far as the treaties and Sanads are altered by the Treaties of Accession.

7709. That I admit. May it be assumed that with regard to the Upper House as well as the Lower House, as in the case of British-Indian Provinces, there will be Appendices attached to the Act indicating the distribution of seats out of the States' quota to the various States?—Yes, there must be.

7710. Am I correct then in stating that there is nothing in the White Paper Proposals to prevent such of the States as may so desire to pool their allotted quota of the seats and "wherever possible" select joint representation on such terms as may be agreed?—No, we do not contemplate dealing with questions of that kind in the Constitution Act at all. I have always taken the view that questions of that kind are really questions of internal organisation for the Princes themselves; and there will be nothing in the Constitution Act, so far as I contemplate it, that would either ordain an arrangement of that kind or would preclude it.

7711. In view of the very strong body of opinion amongst the States on this question, could you kindly consider the advisability of making it definitely clear in some suitable manner, if not in the Act at least in the Appendices proposed,



that such joint action will be permissible for such States as may so desire?—I would have preferred to leave a question of this kind as really a question of internal organisation. I do not myself see how it could come into the Constitution Act; nor do I quite see how a reference to it could be made in the Constitution Act.

7712. Perhaps in the Appendices relating to the allocation of seats amongst the States. Is it possible to mention it there somewhere, that it is open to the States to enter Federation by any private arrangement that they might make?—Off-hand, I see a difficulty about mentioning it in any part of the Act, and, of course, the Appendices are a part of the Act; presumably, they will be scheduled to the Act. It is, of course, for the Joint Select Committee to consider whether or not they would mention this desire of certain of the Princes in their Report.

Sir *Hari Singh Gour*.

7713. Do I understand the Secretary of State to mean that the Act deals with the relationship of the Federation and the States and cannot make an excursion into the relationship of one State with another *inter se*?—Not over and above the grouping that, of course, will come into the Act.

Nawab Sir *Liaquat Hayat-Khan*.

7714. May I ask you to turn to Proposal 41 of the White Paper at page 47? If a decision of the Joint Session, contemplated under this paragraph be by a bare majority, do you not appreciate, as was pointed out at the second Round Table Conference, that in view of the disparity between the strength of the two Houses, this proposal will seriously detract from the co-ordinate authority of the Chambers, and would, in fact, mean that any proposal which had very substantial support in the Lower House could in certain cases be passed in spite of the unanimous opposition of the Upper House?—I am afraid that it is inherent in any proposal for the settlement of disputes by a Joint Session of the two Houses, that the larger House has a definite advantage, and I think we have got to accept that as an objection to the

system of joint Sessions. The difficulty is to find a better way of settling disputes between the two Houses. I would hope, in answer to Sir Liaquat's further question, that the kind of situation he contemplates would not arise. I would have thought myself that it was very unlikely that the Lower House, in which the Princes will have a representation of 33½ per cent. would be solidly against the Upper House, or that the Upper House, in which British-India has a representation of 60 per cent. would be solidly against the Lower House. I would have thought that in the matter of disputes between the two Houses there would be much more cross voting than that kind of situation contemplates.

7715. Would you kindly turn then to Proposal 48, at page 49 of the White Paper. Is it correct to assume that the White Paper contemplates that the Federal Executive will have to carry the confidence of the Legislature, and therefore, will be responsible to both Houses and not to any individual House. Is that the correct position?—Yes, it is certainly true to say that the Federal Government will depend upon both Houses.

Nawab Sir *Liaquat Hayat-Khan*.] Will it not seriously detract from the influence of the Upper House over the Executive if it were not given an effective share in the control of supplies?

Marquess of *Salisbury*.

7716. I do not know whether I might intervene and ask whether the Secretary of State has a clear idea in his mind of what he means by the responsibility to both Houses? I am afraid I have never been able quite to understand the phrase?—Would Lord Salisbury ask me a question about it?

7717. Supposing the Government received a Vote of Confidence in the Lower House and was refused a Vote of Confidence in the Upper House, what would they do?—It would depend upon how serious they regarded the crisis. It might be that there would be a deadlock between the two Houses; in that case, they might have to have recourse to a Joint Session.

7718. On a Vote of Confidence?—Yes, I do not see why they should not. I

suppose it would be upon some substantive motion.

Marquess of *Lothian*.] Would not the position be the same as the position in this country before the passage of the Parliament Act ?

Marquess of *Salisbury*.

7719. My Noble Friend is at least as good an authority as I am, perhaps much better, but I should have said that even before the passage of the Parliament Act, there was no question that the Government was responsible only to the House of Commons ?—I think it must depend upon as to whether or not the Government could carry on with the support of one House, and if it could not carry on, whether it then would ask for a dissolution, or whether in a particular case there would be a demand for a joint Session. It is impossible to give one general answer to a question that really covers a number of different kinds of contingencies.

Lord *Rankeillour*.

7720. Section 41 contemplates, surely, a Bill, not a Resolution ?—Yes. I was contemplating a substantive motion of some kind, a vote of some sort.

7721. But would there be any point in that going to a Joint Session at all ?—I think it must be judged upon the situation.

Sir *H. Gidney*.

7722. My Lord Chairman, may I ask just one question of the Secretary of State ? In the event of a Vote of no Confidence being passed in the Lower House, and the Government being unable to form a Ministry, and considering that it is a joint Ministry, would it not affect the Upper House, too ?—I do not quite follow the question.

7723. Would it mean the dissolution of both Houses in the event of such an impasse ?—I conceive that it might, but I can conceive also that it might not, it depends upon the type of crisis.

Marquess of *Salisbury*.

7724. The way I should like to put the question is this : Is it not really the fact as the Secretary of State says most

reasonably, that it depends upon the circumstances of the case, that the thing really does not have much meaning at all, being responsible to both Houses ?—No, I would not admit that conclusion.

Earl *Peel*.

7725. Secretary of State, does not it really depend upon the use and wont ?—If I may just complete my answer to Lord Salisbury, I think he must take into account the contingency of a Joint Session. A Joint Session does bring in both Houses, and the Government might, in one way or another, stake its fortune upon a Joint Session.

7726. I think that is a very fair answer, but the Secretary of State heard the question of my Noble Friend, Lord Rankeillour. Clause 41 does not apply to anything except a Bill ?—Yes. I think we ought to look into that point further to see whether it should not be clear that it would also cover a substantive motion of some kind in which both Houses could be brought into action. I would remind Lord Salisbury, that if he would look at Clause 48, he would see there that both Houses are brought in upon the field of supply ; and I think he will agree that in his experience supply is very often the issue upon which Governments stand or fall.

Marquess of *Salisbury*.] I will not pursue it now, because I will have a further opportunity later on.

Earl *Peel*.

7727. I was in the middle of a question, but I was going to ask this general question, whether the use and wont and development of the Constitution will not determine, as time goes on, which is the more powerful House of the two ; it may be the House called Lower, it may be the other House. Then one would be really the dominant House, and, in fact, though not in theory, the Government would probably be responsible really to one House. Is not that how it is likely to work out ?—I think, judging from the experience of other Constitutions, that is the way it usually does work out.

7728. And, therefore, these other questions are rather theoretic than practical, are they not, with great respect to those

who asked them?—They are something more than theoretic. After all, the conditions are somewhat exceptional, namely, the fact that one of the units of the Federation attaches considerable importance to the Upper House, in which it has a larger representation. I think that fact must always carry weight in the development of a Federal Constitution in India. By no arrangement that you can make can you establish an absolute equality, of course, between the two Houses; that is impossible.

*Lord Rankeillour.*

7729. It is not a theoretic proposition that the Upper House may throw out supply in this case?—Exactly.

*Lord Eustace Percy.*] The question is whether the Upper House can grant supply. If it be true, that in this country in practice the Government is responsible to the House of Commons only, it is because the House of Commons alone can grant supplies.

*Mr. Morgan Jones.*

7730. Seeing that the Government can at all times ask for a Joint Session, does not this follow: That supposing the Lower House which is the more democratically elected House, carries a motion of no confidence on a question of social legislation, such as labour conditions, or something of that sort, and it appears then to the Upper House, does it not, in practice come to this, that on issues like that the Government can so arrange that it can never be turned out by the Lower House on a subject of social legislation?—I would not admit that at all. After all, let Mr. Morgan Jones remember the Constitution of the Upper House, which he says is less democratic than the Lower House. That may or may not be the case, but, even in the Upper House, 60 per cent. of the voting is British India.

*Mr. Morgan Jones.*] Yes, I am not unaware of that, or unmindful of it, but my point was this, Sir Samuel, that the Upper House will tend to be more Conservative (using the word "Conservative" in a non-party sense) in constitution than the Lower House, and therefore would, presumably, be more

likely to be less sympathetic to social legislation than the Lower House.

*Sir Austen Chamberlain.*] Why? A great many assumptions underlie that question to which all the members of the Committee will not agree.

*Mr. Morgan Jones.*] I will not enter into an argument with you.

*Sir Austen Chamberlain.*] Is it worth while putting the question to the Secretary of State?

*Mr. Morgan Jones.*

7731. I thought so, but I will not press it if you do not think it is worth while?—Without going into the wider issues raised by Mr. Morgan Jones I would remind him of the Constitution of both Houses. I do not myself admit that one House is more democratic than the other. I will not enter into an argument with Mr. Morgan Jones, but, if he will look at the way each House is constituted, he will see that each House, setting aside the representation of the Indian States, is constituted upon what he would call a democratic basis.

*Mr. Morgan Jones.*] I could pursue it, but the Chairman thinks it is not worth while.

*Nawab Sir Liaquat Hayat-Khan.*

7732. In view of the fact that the Upper House will have to share responsibility with the Lower House including Federal Legislation and raising fresh taxation, and in view of the fact that the Executive will be responsible to both the Houses, Upper and Lower, would not you be good enough to consider the suggestion already made that voting of supplies should be in a Joint Session of both the Houses?—I think in considering a question of that kind we have to keep in mind the practical difficulties. We have tried to give the two Houses equal powers as far as we can. At the same time we have to take into account questions of actual practicability, and, taking those questions into account, it does seem to me strongly to point to grants originating in one House, and to our avoiding a huge assembly as it would be, namely, a Joint Session of 600 or 700 members dealing with every grant. That is one of the

main reasons that have prompted us to propose that grants should originate in the Lower House leaving, however, the Government the power to introduce grants into the Upper House if it so wishes.

Sir P. Pattani.

7733. I have only two questions to ask: With regard to the list of Federal subjects, may I know whether it will be open to the States in the Document of Accession to say that they federate only to the extent of the first 48 items in the common list?—Yes, certainly.

7734. With regard to the Treaty and engagement rights of the States I quite appreciate, and, I think, after the explanation the Secretary of State has given, the States will also appreciate that these treaties and engagements and agreements, having been arrived at with the paramount power, are outside the purview of the Federal Constitution, but, in order that this point of view may be always kept in view by the Federal Constitution, will it be possible to say in the Act, where it is suggested that the paramountcy is outside Constitution, that the relations of Indian States and their treaty rights and engagement rights, being outside, and within the purview of the paramountcy, they will be governed by the present provision of the Government of India Act, just to satisfy the Princes?—My expert advice is all on the side of making no reference to paramountcy at all in the Act. It is, however, possible that we might make a reference to the position in a declaration of some kind, perhaps in a Royal Proclamation, and I certainly would consider the suggestion from that point of view, but I would once again say that my view (and it is supported by all my expert advisers) is that it is better to leave paramountcy out of the Act.

Rao Bahadur Sir Krishnama Chari.

7735. And any State in its Instrument of Accession would preserve all such treaties as it wanted to preserve?—Yes.

Rao Bahadur Sir Krishnama Chari.] In any case in its Instrument of Accession the State will preserve all the

treaties which are not affected by the Federation.

Sir Joseph Nall.

7736. Although the Secretary of State points out that matters of paramountcy are necessarily not subject to the White Paper, and would not appear in the subsequent Act, the field is in fact covered in the Terms of Reference of this Committee, and the Committee will have to have paramountcy in mind in our Report. The Terms of Reference to this Committee quite obviously include it?—I think that is a matter for argument, but, whatever may be Sir Joseph Nall's view about it, my own very strong view about it is that we had much better keep it out of the Constitution Act. It is a question for the Committee and Lord Chairman to determine whether Indian India does come into the Terms of Reference, which are mainly directed to British India.

Marquess of Reading.

7737. Is not paramountcy entirely outside the Constitution?—That is a matter which is simply between the Crown and the Viceroy and the Princes, is it not?—That would have been my view.

Sir Joseph Nall.] I only submit the view that the White Paper proposals are only one part of the Terms of Reference to this Committee.

Sir Akbar Hydari.

7738. Will it be possible to state in the Constitution Act, possibly in the Preamble, that the field of relationship as between the Crown and the States outside the Federal sphere will be outside the scope of the Federal Constitution, and would not that meet it?—I would much rather not commit myself to any way in which such a declaration should be made. As a layman who knows nothing about these legal questions at all I should be nervous of bringing it into the Act, either into the Preamble or into the Act itself, because I should be so much afraid that the lawyers would then get hold of it, and, before you knew where you were, they would drag it into the Federal Court.

*Sir Tej Bahadur Sapru.*

7739. May I draw Sir Samuel's attention to Section 132 of the Government of India Act at present, and would he say whether it has any bearing, and whether it applies?—(Sir *Malcolm Hailey*.) I think the answer to that question is that Section 132 was put into the original Act for a special purpose, namely, to carry on the treaties that had been concluded with the East India Company, and to secure their continued validity under the new arrangement.

7740. Are not most of the treaties with the Indian Princes of the time of the East India Company?—There were a very large number. This section dates from about 1858. It was not introduced in the recent revision of the 1919 Act.

7741. It goes back to 1858?—Yes.

*Sir P. Pattani.*

7742. There are subsequent engagements and agreements with the Government of India as it exists to-day. Beyond those treaties entered into with the East India Company there have been many subsequent engagements and treaties with the Government of India as it exists to-day, and they are all, I hope, of the same validity, and are equally safeguarded and guaranteed?—Yes.

7743. After the promise, or the Secretary of State's suggestion that it might be possible to have a declaration by the Crown regarding the guarantee of the treaties, I do not wish to press the point because I quite realise that such a provision in the Constitution might raise difficulties in the future, as was explained by the Secretary of State.

*Sir Tej Bahadur Sapru.*

7744. May I suggest to the Secretary of State to take into consideration the bearing of the first part of Section 131 and Section 132 upon the replies which he has been giving and upon the point of view which has been submitted by the Indian States representatives. You cannot overlook that?—(Sir *Samuel Hoare*.) I had not overlooked it, and my attention had already been drawn to it, and my advisers tell me that that need not modify the answers I have given, but, obviously, after what Sir

Tej has said, I will look into anything he suggests again.

*Sir P. Pattani.*] Before I had finished my question Sir Tej came in with a question.

*Sir Tej Bahadur Sapru.*] I am sorry.

*Sir P. Pattani.*

7745. When the pronouncement is made by the Crown will it be on the lines of the pronouncement made in 1857 when the change of Government from one hand into another was brought about. The present juncture is only a question of a constitutional reform, and the States would naturally wish, and I think Government ought to insist, that the pronouncement regarding the treaties and the relations with the States should be on the lines as pronounced in 1857. May I take it, when further consideration is given to this, it will be considered?—I would not again like to commit myself to the actual form, but I can say offhand I see no objection in principle to the suggestion Sir Prabhashankar has made and we will consider it.

*Dr. B. R. Ambedkar.*

7746. I would like to ask the Secretary of State whether the Instruments of Accession that would be passed by the different States on entering the Federation would find a place in the Constitution Act?—The answer is: No, they would not.

7747. How would it be possible, supposing a dispute arose in a Federal Court, for the Court to determine whether any particular subject which was the subject-matter of dispute was within the competence of the Federation?—I imagine—here I speak as a layman—they would take into account the treaty, just as they take into account treaties now.

*Sir Tej Bahadur Sapru.*] Yes.

*Dr. B. R. Ambedkar.*

7748. But it would not be part of the Constitution Act?—No; it would not be in the Constitution Act; neither are the Treaties now in any Act of Parliament, yet (Sir Tej Sapru and other Indians, will correct me if I am wrong) treaties have been constantly taken into account.

*Sir Tej Bahadur Sapru.*] Yes. Treaties are part of the municipal law everywhere.

*Sir Akbar Hydari.*] I have not had any opportunity of putting questions regarding Federation, so may I do that now ?

*Sir Austen Chamberlain.*] I will come back to you.

*Sir C. P. Ramaswami Aiyar.*] With regard to the strength of the Legislatures, Mr. Chairman, would it not be correct to say that the position now is—whatever ideas originally were held on the subject—that the strength as now indicated in the White Paper is the strength arrived at as a result of the desires of the Provinces, and the majority or a large number of the States ?

*Mr. Zafrulla Khan.*] Before the Secretary of State replies to that question, may I ask your advice on one matter ?

*Sir Austen Chamberlain.*] I think I must allow the Secretary of State to reply first and then you can put your question.

*Mr. Zafrulla Khan.*] I am not putting a question. I am asking your advice with regard to a question. I do not object to the question at all, but I want to know whether we are entitled to put questions at this stage relating to paragraphs 22 to 37 which my Lord Chairman had reserved under sub-head (4). I want to know what sub-head we are on. I thought we were on sub-head (2). Questions have already been asked about (4), and I want to know whether these questions are permissible, so that in my turn I may put questions.

*Sir Austen Chamberlain.*] According to the Lord Chairman's proposal, we are on 1 to 60. Paragraphs 26 to 37 were excluded from that and put down under the Franchise question.

*Witness.*] I would have thought the discussion has roved over a rather wide field. Perhaps it is difficult now to maintain the distinction between the two chapters, but it is for you to decide.

*Sir Austen Chamberlain.*] I agree. I think we must allow our Members to exercise a certain latitude. They cannot work their minds entirely in watertight compartments.

*Sir C. P. Ramaswami Aiyar.*

7749. Shall I put the question again ?—I think I remember the question, Sir. It is true to say that the proposals in the White Paper are a result of taking into account the various points of view and also taking into account the views expressed at the three Round Table Conferences. In the nature of things, they are something of a compromise, and I would not say that the actual figures are verbally inspired one way or the other. Upon the whole, we have thought that they were a fair basis for the discussion of this Committee.

7750. Would it also be correct to say that there were discussions in India subsequent to the Round Table Conferences which also dealt with this question of the strength of the Legislature ?—Yes, certainly.

7751. Would it be accurate to put the position like this, that it would be more likely to give satisfaction if a larger House enabled more component parts to take an effective part in the Federation ?—It is not altogether easy to give an answer in a single sentence to an inquiry of that kind. I think, up to comparatively recently, many of the States thought that it was possible to have individual representation for all the States. That I think we are agreed now is quite impossible. Any system of representation must include groups and until the States have gone somewhat further into the grouping it is very difficult to give a definite answer as to their views about numbers. For instance, when it is clear to certain States that they can only be represented by grouping, that fact may have a bearing upon their view as to the numbers of the Chamber. Speaking generally, however, it would be fair to say that the kind of numbers that we have suggested look like satisfying more States than a smaller number.

7752. I come to another subject and that is : For helping the Viceroy and the Governor-General in the interpretation of the Constitution, and also with regard to the questions that may arise out of his special responsibility, would or would not it be necessary to provide in the Constitution for a functionary analogous to the Attorney-General or the Advocate-General ?—This is an important sugges-

tion that has been made during our discussions, and I would like to think further about it. It is a question that I think the Committee and the Delegates ought to consider.

7753. In the consideration of that question would the Government bear in mind the very important and almost quasi-judicial functions exercised by such a functionary and the very great part played by the Attorney-General in the English Constitution?—Yes, I think that is a feature that ought to be taken into account.

7754. Would the matter also allow of consideration like this, that in a Federal Constitution, with the possibilities of conflicts of interpretation and the setting at rest of difficult questions that may arise with regard to Provinces and the Centre, the Federal Government and the States, and the necessities that the Governor-General and the Viceroy may have of having expert advice, such a functionary would be most essential?—I think that is the kind of consideration that the Committee ought to have in mind.

7755. Certain questions were asked of the Secretary of State regarding the allocation of seats. I take it that in the main that allocation would be left primarily and to start with for agreement between the States?—Yes.

7756. And it is only to the extent, and when such agreement becomes impossible, that any further question would arise as to the Government intervening *suo motu*?—Yes.

7757. With regard to the question of discussing and asking questions on matters connected with Indian States, I take it the main object of Government would be, as far as possible, to preserve the present position of affairs?—Yes.

7758. At the same time it is possible that in the interests of one or more of the States, the asking of such questions might be an advantage rather than a disadvantage?—Yes, I think there might be such cases.

7759. But apart from what may be called the exceptional treatment arising in that particular, the present state of affairs is contemplated as existing in future?—In conjunction with what I said in answer to earlier questions this morning.

L106RO

Begum *Shah Nawaz*.

7760. Secretary of State, you are aware of the principle of equality between the women of India attach to the recognition of the principle of equality between the two sexes with regard to their rights of citizenship being recognised as a fundamental right in the new Constitution. If there is to be no chapter on fundamental rights, may we know if it is contemplated that this will be made either in the pronouncement by the Sovereign before the inauguration of the new reforms or in the Instrument of Instructions?—I am not quite clear what it is that the Begum desires; could she make her wish a little more precise?

7761. That in future sex shall be no disqualification for a woman to serve in any and every capacity. In this connection, may I point out the position of the lower sex in Section 75, on page 37, line 10?—It is very difficult to give a general answer to a very general question of that kind. One has got to take into account the kind of declaration that might be made and the kind of reactions that might take place, if a declaration were made. What I would say is that we will take into account what the Begum has proposed and see how far it is practical and safe to make the kind of declaration that she desires.

7762. And the principle of reservation of seats for women having been accepted by His Majesty's Government under the communal award, may we know why no seats have been reserved for women in the Council of State?—We have with the Council of State worked very much on the lines of the Lothian Report, namely, that while special interests are represented in the Lower House, they are not, as such, represented in the Upper House. The Begum will, however, see that it is open to a woman to be elected to the Upper House just as it is open to a man. She will also remember that the Governor-General will have the small number of nominated seats to fill, and so far as I am concerned, there would be no proposal in the Constitution that would preclude him from nominating a woman or women to some of these nominated seats.

7763. I mention this, because we find that wherever no such reserved seats are

provided for, people are taking it for granted that it is the intention of His Majesty's Government that women should not enter the Assemblies?—I myself should like to see some women in the Council of State; I think it is most important that we should see some there.

7764. According to the Proposals in the White Paper, there is to be a very high property qualification for membership of the Upper Chamber. This would mean that there would be very few women who would be qualified for membership of that House. May we request you to supplement this high property qualification by an educational qualification either for both men and women, or if it is not possible to have that for men, at least for women?—As I said the other day, I do see considerable administrative difficulties against a differential educational qualification for men or women. As to whether there should be added to the qualifications for the Council of State an educational qualification common to both men and women, I think that is essentially a subject for the discussion of the Committee. I would not to-day like to express a final view, one way or the other.

7765. I do not mean by the franchise qualifications, qualifications for membership of the Upper Chamber?—That was what I had in mind when I gave the answer. The Begum will remember that any member of a Provincial Chamber, apart from these qualifications, can be elected to the Council of State, men or women.

Marquess of Lothian.

7766. Irrespective of the property qualification?—Yes. If Lord Lothian will look at paragraph 27, on page 44, he will see that the qualifications are alternate qualifications.

Rao Bahadur Sir Krishnama Chari.]  
Past members.

Begum Shah Nawaz.

7767. Secretary of State, you are aware of the strong objection which almost all the women of India have taken to an indirect election to the Federal Assembly, of there being seats being filled by the Provincial Legisla-

tures in the Federal Assembly. May we know why this is being forced on them, in spite of their repeated protests to the contrary?—We have had different views expressed, and, as far as I can remember, I would not say that the view of the women from India has been unanimous on the subject.

7768. There are eight Memoranda submitted to this Committee and in all these Memoranda women are asking for direct election to the Federal Assembly?—The Committee and the Delegates will at once see the complexity and the magnitude of the problem of direct election of that kind. I suppose then the constituencies would be of an enormous size, would not they?

7769. Would it not be possible for the Government to reserve one seat out of the total number for one woman to be returned?—It would be a prodigious constituency, would it not? It would be a constituency, perhaps of a whole Province.

7770. There would not be any need of having one constituency of the whole Province if, out of the total seats for the constituency, in a given number one was reserved for one woman to be returned?—I am not sure whether the women in the other constituencies would accept an arrangement of that kind.

Sardar Buta Singh.

7771. One question from Sir Malcolm Hailey, with your permission, Sir Austen. Sir Malcolm Hailey, an Act was passed which was called the Gurdwana Act during your time in the Punjab?—(Sir Malcolm Hailey.) Yes, that is so.

7772. And under that Act women have been given an equal right to vote at the poll, under the Gurdwana Act. Is that a fact?—Yes, that is so.

7773. And there is no such law that the women are required to make application under that Act in order to become voters?—That is so.

7774. And I think you would generally agree with me that that system has worked so far very well; that the women have gone to the poll in very large numbers during these Gurdwana elections and no difficulty has occurred



such as is contemplated under the present White Paper proposals?—Yes, I would agree to that fact as a fact, but, of course, the vote is limited to Sikh women, and none of us have ever felt the particular difficulty in regard to the Sikh women that has arisen in regard to some other classes. Moreover, there is no regular electoral roll. The Gurdwana voting is rather a loose arrangement. It has not involved any very precise procedure of preparation of a roll. I have never heard of such a thing as an objection brought against any person for voting without being entitled to do so. It is a very loose, popular kind of system intended to get representatives for a particular purpose, which does not extend outside the community itself.

7775. But if I may tell you that after that Act, in this very year at one particular place more than 200 objections were taken, would you take it from me that the people are taking great interest as time moves on?—Yes, of course, I accept that fact. It is subsequent to my time. When I knew the case, it was, as I say, a very loose and informal kind of voting.

7776. A question on another point, with your permission. You have got great experience of the Sikh community in your Province, and I take it from you— I want to ask whether it is a fact, because some questions were put here about the contact of the members with the constituencies, is it, or is it not, a fact that amongst the Sikhs there is a great deal of contact between the members and the voters, and there are various ways in which that contact is maintained. That is to say, there are different groups in the districts and the member goes to them at a particular time, and that contact is maintained on different occasions, religious meetings, and also resolutions are passed, and, in that way, they send in their grievances both to the member as well as to the head of the Province?—Yes. I think there is a fairly close touch between Sikh representatives and their electorate, but the touch is mainly, I think, confined to those questions, partly religious and largely communal, in which the Sikhs themselves have taken the greatest interest.

L106RO

7777. With your permission, and also on the economic question as well, during recent times, fall of prices and that sort of thing, affects everybody there, and we are constantly being worried that the land revenues are excessive and the people are taking much interest in all these things. The prices have gone down; they are agitating over such questions; and in that way contact is also maintained, not only on religious questions?—Yes; of late I would include that range of questions in those in which there has been a pretty close contact between the representative and the electorate; there always has been a great solidarity among the Sikhs, and very much stronger political organisation than among many other communities in the Punjab.

7778. I want to put one question to the Secretary of State, and this is my last question, and it is this: Is it the fact that during the Great War the Sikh community rendered, I should say, the greatest possible assistance to the Empire?—(Sir Samuel Hoare.) I think we should all agree that there was no community in India that rendered us greater service, and time after time we have expressed our great gratitude to the Sikh community.

7779. Arising out of that question, is it the fact that during the second Round Table Conference a pact was entered into here, although the Sikhs did not join that pact, but still the Muhammadans, I think, the community in my Province, Christians, Anglo-Indians and others very kindly set apart 20 per cent. of the seats to the Sikhs. I do not want to open that question, whatever it is that has been decided, but I wish to protest against what probably is the reason for the Muhammadan community agreeing that we should get 20 per cent., and in the Award we were given only 17 and a little more?—I am afraid agreement was not reached. We all tried very hard to reach it, and we went on day after day and night after night trying to reach it. I wish very much that agreement had been reached, and then it would have been quite unnecessary for the Government to intervene at all.

7780. I would make this request to the Secretary of State, that although this award finishes as regards the Provincial

Legislatures, still there is some hope as regards the Central Legislature, taking the state and the importance of my community, which is in the Punjab, into consideration, we will be a little more favourably treated?—If I said a little bit more favourably treated, it would imply that our decision is an unjust decision, and I could not admit that fact. What I will say is that we must take into account the rights of a great community like the Sikhs, and we certainly shall not ignore them when we come to make up the details for the representation in the two Chambers of the Federal Legislature.

*Mr. Zafrulla Khan.*

7781. May I call your attention to paragraph 12 of the Proposals at page 40?—Yes.

7782. That contemplates that the Governor-General will have authority to appoint, if he so chooses, as many as three Counsellors?—Yes.

7783. Of course, he may appoint less?—Yes.

7784. Could you inform the Committee and the Delegates, if you can at the present moment, as to what sort of Portfolios these three Counsellors might hold? If you have not made up your mind on that, I shall not press you?—We had in mind principally, of course, the Reserved Departments. We had in mind Defence, Foreign Affairs and the Ecclesiastical Department.

7785. That is clear from the paragraph itself. My question was rather on this: Supposing the Governor-General exercises the power given to him here, and appoints as many as three Counsellors, what sort of division of these subjects to each Portfolios do you contemplate. Why should it be necessary? He may have a necessity on some occasion to appoint three Counsellors?—I think he would certainly require a Counsellor for Defence; I think he would require a Counsellor for Foreign Affairs. As to the small Ecclesiastical Department, that is a different question; it would depend very much upon whether or not he could fit in what would be a very small administrative task into one or other of the Departments.

7786. Then am I to understand that it is not contemplated that a Counsellor would be required for anything beyond the Defence, Foreign Affairs and the Ecclesiastical Departments?—There is no intention to go beyond those three Departments.

*Lord Eustace Percy.*

7787. Does not the question of the Advocate-General arise for consideration there?—I have excluded the question of the Advocate-General, because we have not discussed it, and I was not entirely clear in my own mind as to what it was that was contemplated, namely, what kind of status the Advocate-General would have; but making that exclusion, I would give the answer I have given to Mr. Zafrulla Khan.

*Mr. Zafrulla Khan.]* I was myself not excluding that question.

*Mr. M. R. Jayaker.*

7788. Will the Secretary of State consider the possibility or the desirability, in case there is such an Office, of making that Office dependent upon Party considerations, as in England; he will be corresponding to the Attorney-General, and the Attorney-General is appointed by the Government of the day. Will he make a similar provision in the Indian Constitution if he has an Advocate-General for the Federal Government?—I would much rather not express a final opinion, but what I would say is, I have gathered the impression from the questions that have been asked this morning that what was in the minds of the questioners was not so much a Party Minister as a non-Party impartial man, namely, the Attorney-General, not in his capacity as a Member of a Party Government, but the Attorney-General in his quasi-judicial position.

7789. But he must have a Court before which he practises; his Office cannot be in the air. Would you make him an Advocate-General of the Federal Court?—I would like to hear more about the proposal; it is a comparatively new proposal to me, and I own I have not considered it in its implications.

*Sir Tej Bahadur Sapru.*

7790. May I present you with another aspect of the question? In certain Pro-

vinces of India there is no Advocate-General. Take, for instance, the United Provinces and the Punjab : the office is held by a lawyer who is called the Government Advocate. He is not appointed by the Crown, and he has not got exactly those functions to perform which the Advocate-General has to perform. In the case of Provinces where there is no Advocate-General, do you contemplate that the Office of the Government Advocate should be a Party office or that the Government Advocate should be appointed irrespective of the Party ?—I have been considering the appointment in the light of this morning's discussion as a non-Party impartial appointment, but I said in answer to the first questions that were asked me about it that it was to me a comparatively new proposal, and I would very much rather consider it in its various aspects before I gave a final opinion upon it.

Sir *Tej Bahadur Sapru*.] And the Government of the day at the Centre is entitled to have the advice of a lawyer in whom it has confidence.

*Marquess of Reading.*

7791. May I put one question in order to save the position with the Secretary of State. It is not to be assumed that because we have not intervened in this matter we have no view. It is really a quite important question as put in that way ?—I was assuming that there would probably be legitimate differences of opinion, and that I had better not even pretend to express a final opinion until I had heard these differences of opinion in greater detail.

*Mr. M. R. Jayaker.*

7792. My object in asking the question was to suggest to the Secretary of State that it was a point worthy of being considered ?—Yes, I would certainly agree.

*Sir C. P. Ramaswami Aiyar.*

7793. In the consideration of the question, would the Secretary of State bear in mind also the distinction that may be drawn between what may be called a Federal officer in the nature of an Attorney-General advising the Federation, and an officer who might be available to the Viceroy or the Governor-General in

relation to the topics which I indicated this morning ?—Yes, I think we ought to take those points into account.

*Sir A. P. Patro.*

7794. May I ask at the same time that the whole condition of the country and of the taxpayer may be considered before making the appointments ?—Certainly, I agree.

*Mr. Zafrulla Khan.*

7795. May I draw your attention to paragraph 13 on the same page, the last sentence. Is it contemplated, as you explained in the case of the Provinces, that the persons appointed Ministers at the Centre, even the person who is appointed Chief Minister, may be drawn from among the small number of nominated Members which you propose with regard to the Upper Federal Chamber ?—I was contemplating making no distinction between one Member and another in either Chamber ; I was contemplating treating them all alike. That would mean that a nominated Member would be eligible for a post in the Ministry, just as a Peer would be eligible here.

7796. With, of course, this difference, which is perfectly obvious, that if a nominated member is not satisfactory in one Session to the Governor-General he may not be nominated again, and a peer cannot be excluded simply as a result of his conduct in the House of Lords, or his voting in the House of Lords one way or the other ?—I was contemplating that the nomination, if there is this small nomination in the Upper Chamber, would be for a substantial period of years—a sufficient period of years to give the nominated member independence.

*Mr. Zafrulla Khan.*] While I am on that subject I might anticipate paragraph 26.

*Dr. B. R. Ambedkar.*] Would not the nominated member hold office during the term of the Legislature ?

*Mr. Zafrulla Khan.*

7797. Yes ?—Yes, but *Mr. Zafrulla Khan* raised another issue, namely, whether the fact that this Minister had been nominated by the Viceroy might not compromise his independence ? You

could save his independence by making the nomination for a period of time.

*Mr. N. M. Joshi.*

7798. Might I ask a question, Mr. Chairman? You are now replying as to whether a nominated member may be a Minister or not. My question is whether a man who is appointed Minister, and fails to secure election could be made a nominated member?—Yes, just as it has often happened here. Anyway it has sometimes happened here that a man fails to be elected a member of the House of Commons, and he is subsequently made a peer.

*Mr. Zafrulla Khan.*

7799. While I am on that topic, as I said I may anticipate paragraph 26, page 43, only with regard to this point. In view of the fact that the Upper Federal Chamber will be indirectly elected, also that the qualifications for candidates are likely to be fairly high, and it will not be like an ordinary election discouraging people of the elder statesman type from standing the racket of an ordinary election, what is the particular necessity of adding these 10 members to the Upper Federal Chamber? What kind of percentage is it contemplated would fail to secure election which would be so essential to the working of the Constitution itself; 10 members must be nominated to the Upper Chamber?—I think my main argument for a small number of nominated members of this kind is based upon the experience of other countries where it has been found useful to bring in Ministers and members of the Second Chamber who would not be able to get there by the ordinary channel of election. We here have an opportunity of that kind in the existence of the House of Lords, and I think it would be a wise act to have some such power of that kind under the Indian Constitution, of a limited extent, I agree. The number we propose is a very small one, but it is just a sufficient number to enable the Governor-General, or, indeed, the Federal Prime Minister, first of all, to have a rather freer choice, and, secondly, to redress questions of balance that may need redressing. That is our

argument for this small number of nominated members.

7800. May I put this to you as a suggestion, perhaps. I do not want to argue this question: That this number, although small, is likely to arouse suspicion, firstly, on the ground that it would enable the Governor-General to smuggle in people whom he wants to appoint Ministers, and under Indian conditions it would be quite possible to form the Cabinet first and to obtain for them a majority in the Chamber afterwards. Secondly, there would be apprehensions on the ground that various interests that may be placed in the apportionment made of the elective seats may become unbalanced rather as a result of this power of nomination, and, having regard to these two considerations, I suggest this would be rather an unstabilising factor than a stabilising factor?—We must obviously take into account apprehensions of that kind when they are raised. My own view is that under our proposals they are unlikely to be realised. We are making the proposal with neither of these contingencies in our minds at all.

7801. Secretary of State, with regard to these 10 members, do you, or do you not contemplate that the Governor-General will apportion them between British India and the Indian States in accordance with the ratio that might eventually be fixed with regard to their representation in the Upper Chamber?—Speaking generally, yes.

7802. Then do you, or do you not, contemplate that with regard to British India he will apportion them among the communities in the ratios which may be fixed eventually for the Upper Chamber?—I think there, again, my general answer would be, yes.

7803. I will leave it at that, with the suggestion that it would be rather difficult for him under those circumstances, on the one hand, to be left with free choice, and if he did not stick to those proportions then it would be, on the other hand, a disturbance of the balance, I leave that for your consideration. I do not want you to reply to it. Now paragraph 24 on page 43. Before we go on, with the Chairman's permission, I will refer to paragraph 14 at the bottom

of page 40. Again I am putting this to you. We can ourselves see, without asking you, that it will be possible for the Governor-General in forming his Ministry to allot a portfolio dealing with entirely Central subjects to a States Member of the Cabinet; but the question is this: Have you a hope, are you looking forward to the fact, that the Governor-General would be so able to arrange the division of portfolios that that would not happen?—I certainly would hope so.

Mr. Zafrulla Khan.] Now paragraph 24 on page 43.

Sir P. Pattani.

7804. Does that mean that it will be the Governor-General who will assign the portfolios, or will it be the Government of India, including the Ministries, that will assign portfolios?—We did discuss that question at great length about a week ago and I think, if Sir Prabhankar will look at the answers I gave, he will see I did make my position quite clear.

Mr. Zafrulla Khan.

7805. With regard to paragraph 24, again I am merely drawing your attention to the suggestion that in view of the fact that the Upper Chamber will be elected by the Provincial Legislatures, is not it worth considering that, instead of fixing a date after which, unless sooner dissolved the Council of State would automatically be dissolved, as soon as the Provincial Legislature is dissolved the new Provincial Legislature may be entitled to elect its quota to the Upper Chamber, the old members continuing during the interregnum, as it were, while the elections are continuing. In that way the Senate will always continue to represent, or rather reflect, the state of the parties, as it were, in the local Legislatures?—There is a variety of ways of dealing with the election of two Chambers, and Members of the Committee will remember that the Statutory Commission deals in some detail with the problem and sets out the arguments for and against most of the obvious alternatives. I will consider the point Mr. Zafrulla Khan has raised. Off-hand, it would occur to me that, in the first place, his proposal would make the

Second Chamber definitely less stable. Secondly, I do not off-hand see how his proposal would fit in with the arrangements for the representatives from the States. It seemed to me, as he explained it just now, that the result of it would be that the States representatives would go on for ever.

7806. I see that objection. Paragraph 26, apart from nominations to which I have already alluded, brings us to the size of the Chambers, and I do not want to take up the time of the Committee putting to you different considerations that have already been put, but may I put to you with regard to the size one further consideration which might be kept in view when the final numbers are to be settled and it is this: Between the various conflicting views I have no doubt one consideration which has helped to keep the numbers lower than suggested by some members was the consideration of the effectiveness and the manageability of the Chambers?—Yes.

7807. Those considerations would be the same to-day as they might be 25 years hence. With regard to administrative machinery for elections and so on, there might be changes, but surely a very large Chamber which is not manageable to-day would not be manageable 25 years hence. The consideration I want to put before you is this. We certainly contemplate further advances in the franchise, and do not you think if you started now with the maximum number which would still retain effectiveness and efficiency to-day, 25 years hence you might be compelled by the sheer weight of numbers added to the electors to enlarge the Chambers still further and to go beyond the limit which effectiveness suggests? Would not it, therefore, be possible to start with smaller numbers to-day and to go on expanding them as we make advances in the franchise?—I think it certainly would be possible, but here again it is a question of reconciling the different points of view.

7808. Yes; as I said I am merely putting one consideration, which might be considered along with others?—Certainly; and I think that is a factor the Committee must take into account, but it is one of the factors that enter into

this big problem as to whether the Chambers should be big or small and how they should be constituted.

7809. I rather thought attention was not being paid to what might happen, say, 25 or 30 years hence?—Yes.

7810. With regard to another aspect of the Upper Federal Chamber, may I draw your attention to page 11 of the White Paper?—Yes.

7811. It is paragraph 18 in the Introduction. At page 11, the last sentence, the White Paper says that "if it is considered that adoption of proportional representation in the manner proposed makes insufficient provision for this end," that is to say, to secure to the Muslims one-third representation in the Upper Chamber—"modification of the proposals should be made to meet the object in view." The question I want to put to you is this: Have you or have your advisers considered the matter further, and are you of the opinion that by the method proposed the Muslims will or will not secure their one-third representation in the Upper Chamber?—We have considered very carefully this point and we are satisfied that under the proposals in the White Paper the Muslim Community would not obtain their full  $33\frac{1}{3}$  per cent. representation in the Upper House. With your permission, Sir Austen, I will amplify that answer a little bit further. One-third of the British India seats in the Upper House would be 50 seats. Calculations go to show that if the voting in the Provincial Councils for the elections to the Federal Upper House went on purely communal lines, that is to say, if every elector in using first and succeeding preferences gave priority to to all candidates of his own community, the result would be, assuming the Provincial Legislatures to be composed in the manner proposed in the White Paper, that the Muslims would secure 45 seats, with a strong probability, though not an absolute certainty, of one more. They would therefore be four seats short of the one-third which the Government has promised. It appears necessary, therefore, to make some slight modification. It is obviously desirable that such modification should be of a kind to disturb as little as possible the general scheme for electing members of the Council of

State by proportional representation from the Provincial Legislatures. The following plan seems likely to be the simplest, and without at the moment desiring finally to commit myself to it, I think it is the most promising solution. In Madras, Bombay, the United Provinces, Bihar and the Central Provinces, that is to say, in all the Provinces with more than five seats in the Council of State, with the exception of the Punjab and Bengal, one seat should be allotted in each of these Provinces to be filled by election by the Muslim members of the Provincial Legislature only, all the remaining seats to be filled by proportional representation in the ordinary way as proposed in Appendix I to the White Paper. This should give the Muslims their 50 seats, assuming, of course, that the voting proceeds on purely communal lines.

7812. Secretary of State, is it a fact that under the proposals contained in the White Paper, the Europeans, the Anglo-Indians and the Indian Christians would have the right to elect their own representatives by a system of separate representation, to the Upper Federal Chamber?—Yes, that is so; and the reason is that, with small and, in many cases, very scattered communities, it is difficult to find any better alternative.

7813. Is it a fact that under the present system Muslims have the right to elect their representatives to the Council of State by separate electorates?—Yes.

7814. Are you aware of the very strong sentiments of the Muslim community that that right should not be taken away from them under the new Constitution?—Yes, I think I am aware of the Muslim feeling on the subject. At the same time, Mr. Zafrulla Khan will no doubt keep in mind the course that our discussions have taken over the last two or three years, and I was under the impression that some such arrangement as I have suggested would both conform with those discussions and would also conform with the legitimate demands of the Muslim community.

7815. Secretary of State, under your proposals, now taking the White Paper proposals along with your suggestion made this morning, would not the picture be this: Europeans (Anglo-Indians and

Indian Christians to elect by separate electorates; other communities to elect by proportional representation; this will give to the Muslims the major part of their representation; then the Muslims in certain Provinces to supplement it by a system of separate representation?—It is an arrangement composed of many differences, I admit, but I do not myself see any other alternative that will not strike much more severely at the foundations upon which we have been holding these discussions in the last two years, and I am anxious, so far as it is possible, to avoid opening out a big new field of controversy.

7816. Secretary of State, may I put one question on this topic while I am on it? You need not give an answer to it if nothing has been done so far. When you were concluding the Session of the Third Round Table Conference and you made the announcement that so far as the British India share in the Federal Legislature is concerned, Muslims would be secured one-third, you expressed the intention of assisting the satisfactory settlement of the question of representation of Muslims from the Indian States by such means as may be possible. May I ask whether anything has been done in that direction so far?—I have had many talks with the representatives of some of the States upon the subject and I have impressed upon those representatives in these talks the great importance of holding a fair balance between the communities in any representation that they might send to the Federal Legislature. I have found them, without exception, very sympathetic to the idea, provided it is left to them to arrange it in their own way and provided that we do not do what would be foolish from every point of view, namely, attempt to dictate to them. I feel considerable confidence myself that we should find in the States representation a substantial Muslim representation, and I will go on pressing the importance of that point of view upon the States; but, as I say, I have found them, in all the talks I have had with them very sympathetic with the conception.

Mr. Zafrulla Khan.] I am very glad to hear that. May I call attention to page 93 of the White Paper, the composition

of the Orissa Legislative Assembly, the last item on that page? I am sure the Committee will recollect, and you will recollect also, that this is an addition to the terms of the Communal Award as announced, because at that time the figures with regard to Orissa had not yet been worked-out. It is proposed to give Muslims four out of 60 seats, and the only other minority that is given any seat in the Orissa Legislative Assembly is the Indian Christian community, to whom one seat has been allotted. You will remember that I put those considerations to the Rajah of Khallikote and the Rajah of Parlakamedi when they appeared as witnesses before the Committee, and they both said they would be only too happy to have the representation of Muslims in this Legislative Assembly raised from four to six—

Sir Austen Chamberlain.] I beg your pardon, but are we not now dealing with the Federation rather than with the individual Provincial Assemblies?

Mr. Zafrulla Khan.] I asked some time ago whether on the general question of the franchise and so on we were not at liberty to put questions.

Sir Austen Chamberlain.] I hope only where it bears directly upon the Federal Legislature.

Mr. Zafrulla Khan.

7817. If I might, with your permission, put this question, I would not have to ask for the opportunity to put further questions at all?—I think I can deal with it in a minute or two. Will you put your question again, Mr. Zafrulla Khan?

7818. Without going into preliminaries, may I say you will recollect that I put questions to the Rajah of Khallikote and the Rajah of Parlakamedi when they appeared as witnesses before the Committee, and both of them said they would be only too happy to have the representation of Muslims in the Orissa Legislative Assembly raised from four to six in case the total remained at 60, and from four to seven in case the total became 70?—Yes.

7819. In view of that expression of opinion, I hope His Majesty's Government will be prepared to reconsider the

allotment of seats for the Muslim representatives?—I have got a note that I had made out of the Orissa percentages; unfortunately, I do not seem to have brought it here this morning. What I will do is to put it in as a paper to the Committee.

*Sir Austen Chamberlain.*

7820. I very much hope that you will not go into this question now; it leads us right away from the subject of discussion. It is the Federation and not the Provincial Legislature in a particular Province that we are considering?—Would you like me or not to finish the answer?

7821. I hope you will not open a discussion on the subject?—May I finish the answer, and then you can stop me, if it looks like opening a discussion. I will put this note in. The point that it makes out, and I think makes out completely clearly, is that the Muslims in the Province of Orissa are getting a higher weightage than any minority in any other Province. I will not go into that point further. Secondly, as to whether it would be possible to add a seat or two to the Council, one has got to remember the reactions of altering figures in other Provinces. What I will undertake to do is to look further into the point and to see whether anything can be done by general agreement; but one has to keep in mind the danger of reactions elsewhere.

*Mr. M. R. Jayaker.*

7822. May I suggest to the Secretary of State, if he is preparing a Note for the use of the Committee, that he might as well point out in that Note what would be the number of seats the Muslims would be entitled to on a strict population basis and what weightage they are getting?—That will be shown in the Note.

*Mr. Zafrulla Khan.*

7823. I will not pursue further what has been said by you, Secretary of State. With regard to paragraph 48, at page 49, I merely want to understand what the position will be. Would it be correct to say that under the Proposals as put forward in paragraph 48, the Lower

House has the right or the power to grant supply and once it grants it, the Government is under no further necessity of getting the assent of the Upper Chamber?—Yes, that is so.

7824. Supposing the Lower Chamber fails to grant supply, then if the Upper Chamber concurs in that rejection or reduction of the grant, the Government cannot obtain that supply under these proposals?—Yes.

7825. But if the Upper Chamber does not, the Lower Chamber rejects or refuses, the Upper Chamber is willing to grant in that case, it is open to the Government to call a Joint Session and the result would be according to the Joint Session?—Yes.

7826. One last question to Sir Malcolm Hailey with regard to certain matters put to him on the franchise. Sir Malcolm, Sir John Kerr told us the other day the average distances to the polling booths in India, and he said not taking into account the sparsely populated area—that would not be in order for this purpose—the average distance to the polling booth would work out at between five to seven miles. You are aware that the present electoral rules forbid a candidate from providing conveyances for the voters to the polling booths, that being so, do you think women in the rural areas would be expected to walk five to seven miles to the polling booth to record a vote and walk again to their homes and miss a day's work in order to vote?—(Sir Malcolm Hailey.) I think that there are women who would do so, when you realise that their husbands will be going to the poll and that normally they will accompany them there. I think, as a matter of fact, the extent to which women will vote in the rural areas will depend very largely on the amount of pressure that a candidate can through his friends apply to the voter. As to the supply of conveyances, there is probably no rule in the world that has been broken more liberally than that particular rule, for it is well known that the supply of conveyances in India is universal, and you cannot get your voters unless you do supply them, or your friends do it for you.

Begum Shah Nawaz.] I requested this morning if I could put only four questions regarding the franchise to the Sec-



retary of State and I was told it was not possible, and I find many of the Delegates are putting questions on the franchise in these discussions.

Sir *Austen Chamberlain*.] I have tried my best to keep the discussion to the purpose it was intended to serve. I have not succeeded very well, but, if there is time, I will come back to the questions which the Begum Shah Nawaz desires to put.

Sir *Hari Singh Gour*.] What the Begum was saying was that so many members have been allowed to break the rule. May she be permitted to put the four questions she has in mind?

Sir *Austen Chamberlain*.] I said I would come back to her, if I could find time, but there are a good many members who, I think, have put no questions so far on the subject we are supposed to be discussing.

Dr. *Shafa'at Ahmad Khan*.

7827. Sir Samuel Hoare, in your last speech in the Round Table Conference last year, you said that the Muslim community should have a representation of  $33\frac{1}{3}$  per cent. of the British seats in the Federal Chamber. In the Lower House, according to the scheme of the White Paper, the Muhammadans have got 82 seats out of 250. This is not exactly  $33\frac{1}{3}$ ?—I was under the impression that there was no question about the Lower House at all; it was  $33\frac{1}{3}$ . It was worked out very carefully.

7828. The number of seats assigned to the Muslims is not  $33\frac{1}{3}$  of 250 seats in the Lower House?—It is as near as one can mathematically get it, is it not?

7829. I think it is one more according to the same proportion?—Dr. Shafa'at will remember there are the special seats to be taken into account too, and the likelihood of the Muslims winning, whatever may be the number of them.

7830. But I think the principle of representation has been that you take the total seats and get your proportion out of that first. So far as the special constituencies are concerned, they are not intended really for communal representation at all?—I do not think I could go so far as to say that. I think one has got to take into account the way in which

they are likely to go. Obviously, one cannot make an accurate prophecy until one knows exactly what the constituencies will be, but I think Dr. Shafa'at and anybody in the Room who has studied this question, could make a pretty good guess as to the way some of them will go.

7831. But my point is this, Sir Samuel, that if any Muslims are elected from the special constituencies, they will be having regard to the advantages of special interests, not particularly to the advantage of Muslims?—I do not think I would admit that. I would have thought they would still have regarded themselves as a part of the Muslim community.

7832. I think an answer that you made makes it absolutely clear that  $33\frac{1}{3}$  per cent. of the seats were to be of the entire British-India seats in the Lower House?—The point is new to me. I have always assumed that everyone was satisfied with this representation of the Lower House.

7833. What I was pointing out was that at least according to the proportion you agreed to last year in the Round Table Conference, we ought to have one more—83. That is not quite  $33\frac{1}{3}$ ?—One cannot divide the seats of this kind and the special seats into entirely watertight compartments; one has got to take them into account as well, and I am convinced that under our proposals there is no risk whatever to be run by the Muslim community; they will get their  $33\frac{1}{3}$  per cent.

7834. I hope Sir Samuel will take this into account at a subsequent stage of the discussions?—Certainly.

7835. Then, Mr. Chairman, I go on to my next topic. May I take it, that in the Treaties of Accession which the States will sign it will be laid down that if they wish to enter the Federation they must make all the subjects from 1 to 48 and accept them as Federal subjects, or will there be considerable variations in those subjects?—We contemplate that 1 to 48 will be the normal field over which the States will surrender their powers. The actual details of the Treaties must be considered each on its own merits, always with this reservation in mind, that if a State attempts to make reservations that would make its entry of no value to the Federation or

not of sufficient value to the Federation, then, obviously, we must have the power of refusing to accept an entry upon those terms.

7836. Then does the Secretary of State visualise any particular State which will accept, say, 1 to 40 instead of the subjects 1 to 48 ?—I should hope not, but there will be variations, no doubt, as to the exact manner in which the States undertake these Federal duties. There again, it is a question to be considered, when the Treaties of Accession are considered, and once again if the State attempts to make terms that would make its entry of no great value to the Federation, then there must be the power of refusing the entry of that State.

7837. I am not concerned at all with the manner. As you probably know, in 1930 a number of States agreed to certain subjects for policy; others agreed to subjects for administration. I was only dealing with the quantum of subjects, whether it is possible in the new Federation to have one State agreeing, say, to 1 to 48 subjects, and the other States agreeing to, say, 1 to 40. How can the Federation be run, if the exclusive subjects vary from State to State ?—I think there must be some field for variation, but what we want and what we should do our utmost to obtain is a basic list of the important subjects with which the States who enter the Federation would, as a whole, conform.

7838. May I suggest to the Secretary of State the possibility of introducing a provision in the White Paper whereby it may be possible for the Federal Legislature or through some other machinery, to transfer some subjects from one list to the other. There are certain subjects, for instance, which are comprised in 48 to 61; some of them could be transferred to the provinces, while others which are now exclusively provisional subjects could be transferred to the exclusively Federal list ?—I am afraid that there never will be any final agreement amongst all those concerned over these lists; they provide one of the most difficult features of the whole Constitution. I would not here and now say that the list in its present form is necessarily in its final form. We shall have to go on considering item by item and detail by detail this list with expert advice

both from here and, no doubt, from India as well. Generally speaking, I think the list is a good one, but I should not at all like to say that it may not be necessary to have some amendment, and to have some readjustment of this or that subject.

7839. My point was that they must not make the list of subjects too rigid; it must be flexible with the possibility of transference of one subject to the other, and some machinery made to provide it in the Constitution itself whereby this change could be effected without all the necessity of coming up to Parliament for this small and comparatively unimportant matter. Is there any possibility of it ?—There is substance in Dr. Shafa'at's point. We have found it very difficult to obtain any measure of agreement as to how to deal with it. The Provinces have been very nervous lest the Provincial field should be diminished without their approval. In the same way, the Federal supporters have been nervous lest their field should be diminished by transference to the Provinces. The difficulty is to find a means that everybody will accept for making the kind of adjustment that Dr. Shafa'at desires.

7840. Then could a State which has entered the Federation be allowed to go out of the Federation ?—No, not as long as the terms of the bargain remain.

*Sir P. Pattani.*

7841. In the event of a breakdown of the Constitution, there is the provision that the Governor-General shall re-enter. In the event of that re-entry which is a consequence of the breakdown, is there to be a State free to say: "As there has been a breakdown, I will secede." I am not pressing the point; I am only raising the point whether, in the event of a breakdown, when the Constitution ceases to function as the reformed Constitution, would it not be right for a State to suggest that it should also go out of what has broken down ?—No, I should hope not. The breakdown would be of a temporary character. The Federal Constitution would remain in being; the clause in the Federal Constitution dealing with the breakdown coming into operation.

Dr. *Shafa'at Ahmad Khan.*

7842. Am I correct in assuming that the Federation when brought into being will be perpetual and indissoluble?—I should hope so.

7843. And that was the position which was pointed out by Mr. Ramsay MacDonald to the Delegates?—Certainly. I think it would be quite fatal to the Federation if either Provinces or States came in and then went out—went out and then wished to come in again. I do not believe any system of Government could continue on that sort of line.

7844. I do not wish to cover the ground which was covered by you in your replies regarding the introduction of Provincial Autonomy, because the matter was discussed very thoroughly, but I should like to know if it is a fact that His Majesty's Government have not departed from the previous policy regarding the introduction of Provincial Autonomy?—Our position to-day is exactly what it was last winter, and which I have always expressed myself time after time.

7845. Has no new factor emerged which makes it essential for the Government to go back upon what it said last year?—No, none.

7846. I am putting this with great diffidence, Sir Samuel Hoare, but I should like to know whether you agree with the suggestions contained in it, or not. The position now is this: You have first Provincial Autonomy; then, after a certain interval, you would have Federation, but, so far as Federation is concerned, it would depend partly upon the entry of the Princes into the Federation, 51 per cent., and so on. Is it not clear that as long as the Princes do not come into the Federation, the responsibility at the Centre will not be possible under the White Paper scheme, and that British-India will, therefore, have to wait until the Princes have decided to come in? Do you not think that some other method may be devised whereby the entry of the Princes could be expedited or a time limit could be imposed within which the Princes could let British-India know, if they are coming in, or not?—I really have got nothing to add to the very full answers

that I gave the other day upon all these questions. I am assuming that there will not be a long and indefinite time.

7847. I am glad to hear that?—I gave a number of answers the other day showing that I was anxious not to make special arrangements for a transitory period on the ground that the more arrangements of that kind you made, the more likely it was that the transitory period should become a permanent period.

*Begum Shah Nawaz.*

7848. Secretary of State, is it not a fact that you received several cables from the Women's Organisations after the publication of the Franchise Committee's Report, strongly protesting against the inadequate number of women voters recommended by that Committee?—Yes.

7849. And did some of these cables contain the words of strong resistance?—I do not recall the actual words, but it was quite clear what was the opinion of the ladies who sent the telegrams.

7850. If the recommendations of the Expert Committee sent out by you are not to be accepted because out of the 10 per cent. of adult women who are to be enfranchised under those proposals, barely 1 per cent. happen to be in seclusion, and some of their husbands are objecting to their names being placed on the registers, and, perhaps, quite 1 per cent. are married to husbands who have two wives, may I draw your attention to the alternative proposals which have been submitted by some of the Women's Organisations and request you to give them your full consideration, because they might diminish some of your administrative difficulties?—I imagine the Begum has in mind such proposals as were urged the other day by Miss Rathbone?

7851. No; I am alluding to some of the proposals that have been submitted by certain Women's Organisations as to giving votes to women above a certain age in other areas, so that you need not have different registers and different qualifications?—I have looked into a number of proposals. Without expressing a final opinion, because I do not think anybody ought to express a final opinion until we have heard the women's evidence, the difficulties that I foresee are,

first of all, administrative difficulties, and, secondly, the difficulties of numbers. Some of those proposals, whilst looking as if they kept the numbers at about the figure of the Lothian Committee numbers, really add very large numbers to that figure. But I would prefer to withhold my opinion until we have had the women's evidence.

7852. We, the women of India, are not enamoured of one qualification, or the other, but all that we wish to know from you, Sir Samuel, is this, that when it has been possible for His Majesty's Government to find a solution for such a difficult problem as the Communal Award, why is it not possible for the best brains in England to find some feasible qualifications which would give the women of India the voting strength of at least one crore and a-half?—I am glad to think now that we have got the best brains on the Joint Select Committee, and I look to them giving me a very great deal of help on this particular question.

Sir *Tej Bahadur Sapru*.] I take it I am now at liberty to put questions with regard to the Federation?

Sir *Austen Chamberlain*.] Yes.

Sir *Tej Bahadur Sapru*.

7853. Sir Samuel, will you please tell us what your view is on the question of lent officers serving in the Indian States being nominated by the Indian States into the Federal Chambers; whether they are British, or whether they are Indian, does not matter for the purposes of my question?—I have never contemplated that those would be the kind of officials that the Princes would send as their representatives. At the same time I have always found a great difficulty in attempting to preclude certain appointments when the choice does rest with the Princes themselves.

7854. Am I right in thinking that your expectation is that it will not be from that class of officers that the Princes would ordinarily send up their representatives?—Yes.

7855. I will not trouble you any more with regard to that question. With regard to a Money Bill could you tell us roughly, without being very precise about the legal language, what is it that you mean by it in Proposal 38 of the White

Paper?—To put it into a rough and simple phrase "Bills for taxation."

Lord *Rankeillour*.

7856. Or loans?—I would like to consider the question of loans. I am not quite clear as to the exact answer.

Sir *Tej Bahadur Sapru*.

7857. Perhaps you might explain whether any loans are raised in India by any Bills at the present moment? I do not think so?—(Sir *Malcolm Hailey*.) No, we do not have loan Bills.

7858. I thought so. If you will kindly turn to Proposal 38 you say there: "Bills other than Money Bills, which will be initiated in the Assembly." Would you kindly explain to me what is it exactly that is intended to be conveyed by the words "initiated in the Assembly"?—(Sir *Samuel Hoare*.) Simply introduced in the Assembly.

7859. That is to say, according to this clause a taxation Bill can never be introduced into the Upper Chamber?—That is so, I think.

Sir *Austen Chamberlain*.] To get that clear, would you allow me to put one question?

Sir *Tej Bahadur Sapru*.] Yes.

Sir *Austen Chamberlain*.] Must not that be subject to the qualification that, if a Bill of this character has been introduced into and rejected by the Assembly it is within the power of the Government to reintroduce it in the Council of State, and, if passed by the Council of State, to demand a Joint Session upon it?

Sir *Tej Bahadur Sapru*.] So far as that is concerned I do not find any reference to that in the White Paper.

Sir *Austen Chamberlain*.

7860. I only want to get it clear?—Yes, I think that is so.

Sir *Tej Bahadur Sapru*.] If you say in answer to Sir Austen's question that that is so, will you please point out under which provision of the White Paper you bring that in?

Mr. *M. R. Jayaker*.

7861. Does it fall within Proposal No. 41?—I think it would arise out of Pro-

posal No. 41, but I quite agree it is not clearly apparent.

*Sir Tej Bahadur Sapru.*

7862. That is what I wanted to point out. May I say to you that Proposal No. 41 does not contemplate the introduction of a Bill in the Upper House when it has been rejected in the Lower House. It deals with a different stage?—Yes.

7863. Lord Rankeillour pointed out to you this morning that Proposal No. 41 expressly refers to Bills?—Yes.

7864. Therefore, it seems to me that under Proposal No. 41 you could not have a Joint Session when there was a conflict between the two Houses in any matter which was not covered by a Bill. I am applying myself to the language of the clause?—Yes.

Marquess of *Lothian.*] Does not Proposal 48 cover your point?

*Sir Tej Bahadur Sapru.*

7865. No. I will come to that immediately afterwards. In point of fact the provisions for a Joint Session in several of the Dominion Constitutions relate to Bills?—Yes.

7866. Now will you pass on kindly to Proposal No. 48?—Yes.

7867. Proposal No. 48, as I read it, only relates to demands?—Yes.

7868. That has nothing to do with the Money Bill. The Money Bill follows that?—Yes.

7869. Therefore under Proposal No. 48, is it your view that if a demand has been reduced or rejected by the Assembly it may be brought before a Joint Session of both Chambers for final determination?—Yes.

7870. But it could not be taken up to the Second Chamber by itself. The moment that stage is reached you will have to have a joint Session of the two Houses?—No, the Government can introduce it in the Second Chamber.

7871. That is exactly what I want to know. Under what Proposal. Neither under Proposal 41 nor under Proposal 48 does it seem to me that the Government could introduce it. All that the Government could do is to call for a Joint

Session?—If it is not clear I am prepared to admit it should be made clearer. We do contemplate a provision of that kind.

7872. Correct me if I am wrong. I am not expressing any opinion, but, as the language of the White Paper stands, I think it is a loose way of saying that the powers of the two Houses are co-equal. They are not co-equal as the language of this White Paper stands?—I think there may be a great deal of substance in what Sir Tej has just said. Obviously we are not at the stage when these provisions are being carefully drafted in an Act of Parliament. We must take those points into account.

7873. It must not be understood from my questions that I am favouring co-equal powers?—No.

*Sir Hari Singh Gour.*] May I point out it is implicit in Proposal No. 38. The very word "initiated" means it was the originating Chamber, and where the Assembly has rejected it under the very terms of Proposal 38, it may be introduced in the other Chamber, because the process of initiation is completed by the first introduction, and its rejection satisfies the word "initiated."

*Dr. B. R. Ambedkar.*] That deals with Bills other than Money Bills.

*Sir Tej Bahadur Sapru.*] I am dealing with Money Bills.

*Sir Austen Chamberlain.*] Secretary of State, you dealt with this point on an earlier day. I am not quite certain whether all the answers of to-day are exactly on all fours with the answers which you gave on the earlier occasion. Would you mind looking at your answers and, if necessary, supplying us with a Memorandum putting the exact position before us?

*Sir Tej Bahadur Sapru.*

7874. That would be better?—I am much obliged. I am afraid with these very technical questions it is difficult very often to follow exactly the questions that are raised. I will put in a Memorandum on this.

*Sir Akbar Hydari.*

7875. In this connection I hope you will bear in mind the consistent position of the Indian States that the powers of

both the Legislatures should be equal ?—  
Yes.

Sir Akbar Hydari.] And simply with regard to the initiation, but not the further prosecution and discussion of the Money Bill ; there is an exception.

Sir Tej Bahadur Sapru.

7876. With reference to the High Commissioner, do you want to assimilate the position to that in Australia and the Dominions, and it is for that you have omitted all reference to the High Commissioner ? The Dominion Constitution made no reference to the High Commissioner. The Government of India Act does make a reference to him, and the White Paper omits all reference to the High Commissioner ?—I had not thought upon this point. I will look into it, but I think our wish generally was that the position of the High Commissioner should resemble the general position of High Commissioners in London.

7877. With regard to the Auditor-General, do you wish to retain the present provisions in the Government of India Act, or do you propose that there must be an independent Auditor-General appointed in India, and that all the money spent in England or in India should be laid before the Auditor-General in India, and the Indian Legislature ?—I would say here again I do not feel able this morning to give a final answer.

7878. You will kindly take note of that question ?—Yes.

7879. Will you kindly turn to Proposal No. 122. I suggest to you under Proposal No. 122 any person coming from any one of the Dominions, which may be treating our Indian Nationals there unfairly, will be entitled to all the benefits conferred by Section 122, and that is not what we agreed to ?—You can stop him entering.

Sir Tej Bahadur Sapru.] What we agreed to last year was that there must be complete reciprocity between Indians and men going from England to carry on a business, trade, or profession, because, so far as England is concerned, it does not discriminate between our nationals, but take, for instance, the case of South Africa, or any other Dominion. Why should we be prepared to give them the benefit of this ?

Sir Austen Chamberlain.] Does not this come under another of our headings ?

Sir Tej Bahadur Sapru.

7880. That will be one of the functions of the Federation ?—I will keep in mind what Sir Tej has said. I know his view, and I am prepared to argue the position in greater detail some other day.

7881. Then I will not put any questions with regard to the financial adviser because you will deal with it probably under another head ?—In the financial discussion.

Sir Tej Bahadur Sapru.] Am I at liberty to ask any questions with regard to the Reserved Departments under the Federation ?

Sir Austen Chamberlain.] No, I think not.

Sir Tej Bahadur Sapru.

7882. With regard to the Reserved Department I understand your suggestion is that the Governor-General shall be empowered to appoint not more than three Counsellors one of whom would necessarily be in charge of the Army Department ?—Yes.

7883. With regard to the Army Budget, will you kindly explain what exactly is the procedure that you provide for ?—Will there be any discussion between the Federal Ministers and the Member in charge of Defence or any other representatives of the Governor-General, and, if so, with what object ? Will they try to arrive at a settlement, or will they simply exchange files between themselves ?—I hope very much that not only will they try to arrive at a settlement, but they will have close and intimate discussions together before the Budget is introduced. I am assuming that before the Budget is introduced questions connected with it would be discussed, of course, at the discretion of the Governor-General, in the Federal Cabinet, and I would very much hope that, although the Governor-General would be solely and exclusively responsible for the expenditure, the Budget will have the full support of the Federal Government behind it.

Lord Rankeillour.] Although I have no wish in the world to prevent these questions being answered I assume the fact of their being put now will not prevent

questions being put on the same lines when we come to the questions of finance.

*Sir Austen Chamberlain.*] No.

*Sir Tej Bahadur Sapru.*

7884. If the Federal Ministers and the Counsellors of the Governor-General cannot come to an agreement with regard to the Army Budget, then I assume that your view is that the Governor-General should intervene and give his final decision which would be binding on both sides of the Government?—Certainly. It is the sole discretion of the Governor-General. The Federal Government as such has no responsibility for the expenditure at all, but I hope for close co-operation between the two sides of government in actual practice.

*Mr. M. R. Jayakar.*

7885. Will the Instrument of Instructions to the Governor-General contain

*(After a short adjournment.)*

*Sir Austen Chamberlain.*

7887. Secretary of State, I think it would be convenient to you and to the Committee to complete, as we have very nearly done, the questions about Federation. Sir Akbar Hydari asked to have an opportunity of putting two or three more questions; perhaps we may take them before we proceed to the judicature, in order to close the discussion on Federation?—I think that will be a very good plan, Sir Austen.

*Sir Akbar Hydari.*

7888. Do you accept in general the recommendation of the Butler Committee in paragraph 58 of their Report, that the relationship of the Crown and the Princes should not in any matter be transferred without their own agreement to a relationship with a new Government in British-India responsible to an Indian Legislature?—Certainly, I agree. I assume that Sir Akbar has in mind when he speaks of a new Government, a new Government responsible to an Indian Legislature?

7889. Yes. Will you please refer to your answers to question 5675, 5684 and 5837? I take it that no change in matters connected with the Constitution

an indication of this wish of His Majesty's Government?—Yes, and Mr. Jayakar will see in the White Paper that we do make provision for what he has in mind.

*Sir Tej Bahadur Sapru.*

7886. Sir Samuel, I am reading to you a statement of Lord Irwin when he went back from England to India and I wish to know from you whether His Majesty's Government even now accept that? This is what Lord Irwin said: "I am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress as there contemplated is the attainment of Dominion status"?—I should say certainly so, subject to the declarations that accompanied it at the time.

as affecting Indian States is contemplated through changes in the Instrument of Instructions without the consent of the States who have acceded to the Federation?—I will just look at these questions. No change made in the Instrument of Instructions could affect the statutory responsibility of the Governor-General for Defence, whether it be made with or without the consent of the States.

7890. But any change that would be made would be as to whether it did affect or did not affect the statutory position of the States and would be made with the previous knowledge of the State concerned?—Certainly. Sir Akbar will remember that nothing in the Instrument of Instructions could affect the clauses in the Act.

7891. Quite so; I was only having in mind the possibility of gradual and ultimate development to such an extent that the position then existing might lead to something being given in the Instrument of Instructions to make the Governor-General act in a way that we might consider as going beyond the position which has been agreed to now. Take the composition, for instance, of the Indian Army?—Speaking generally, questions of Defence, so far as they concern the States, would be dependent, first of all,

upon the provisions of the Constitution Act, and, secondly, upon the provisions of their own treaties, and nothing either in the Instructions or anywhere else could go behind those two basic factors.

7892. What I was trying to put to you was that there might be alterations in the composition of the Army which primarily would appear to be purely with reference to British-Indian Provinces, but which might have had effect ultimately with regard to the Defence position of the States?—The position would then, I imagine, be very much what the position is to-day. If the Government of India decided to make changes in the disposition of troops that either altered an existing treaty or made a position that was embarrassing to a particular State, the discussion would then have to be between the Crown and the State in the field of paramountcy.

*Sir Hari Singh Gour.*

7893. In which the Federation would be left out?—Certainly; this is the field of paramountcy.

7894. But apart from the field of paramountcy, when the question comes up about the Defence of all India, in which the Federation and the Indian States are equally interested, would not the three parties to the agreement be taken into consultation?—They might very well be taken into consultation, but the only responsible authority is the Governor-General.

*Sir Akbar Hydari.*

7895. I presume, with reference to paragraph 2 of the White Paper, that its phraseology will be governed by what is agreed to ultimately in the Instrument of Accession as to the Constitutional procedure whereby the States will come into the Federation, and the Constitutional position that they will hold in it with regard to Federal subjects?—This position will certainly have to be made clear. I have not formed a final opinion as to the best way in which it should be made clear, but I should be prepared to consider any suggestions that the States might make on the subject.

7896. What I want to say is that, perhaps, the wording in paragraph 2 might have to be slightly altered with

reference to what we agree to as to the form of the Instrument of Accession whereby powers in Federal subjects are transferred to the Federation?—Yes.

7897. There is one point with regard to the method of filling up seats in the Federal Legislature which have been allotted to States who, for the time being, have not acceded to the Federation. You expressed a preference for the alternative of giving additional weightage to those States that had acceded. Is it not desirable to get, as far as possible, the economic interests of the regions of those States which have not acceded emphasised, rather than of States who have already?—The difficulty is to avoid those States having the best of both worlds, namely, keeping out of the Federation and, at the same time, having representation created for them in the Federation.

7898. I do not mean it would be representative of those non-acceding States, but what I do mean is that those States would have particular regional interests, and as distinguished from the regional interests in another part of India. Take, for instance, that the Southern Indian States accede, States near Bengal do not accede: then if you give to these Southern Indian States like Hyderabad or Mysore, which have their economic interests over Bombay, if they are given additional weightage then the Bombay view might be more emphasised than the Calcutta view in economic questions, and, therefore, would it not be desirable to leave this rather to the Governor-General after consulting the Federal Government and any other Parties themselves? I am saying whether it would not sometimes act unfairly to the economic interests of a particular region by weighting too much the votes of the States who are situated in another economic region?—It is, of course, to be remembered that in a case of that kind if a group of States that had stayed out felt that their interests were being prejudiced, that, I should have thought would have been an incentive to them to come in. Further, I see objections to the Governor-General making these appointments rather than the States, at any rate, making the recommendations for the appointments. I think, as soon as the Governor-General makes the appointments, the position



will be very much misrepresented, and over the whole of British India it will be said that under another name we have once again created an official *bloc*.

Sir Akbar Hydari.] Of course, if they take that view of what is required by the interests, I have nothing further to say.

Sir A. P. Patro.

7899. I want to ask just a supplementary question. Do you remember that British-India representatives were opposed to any weightage being given to the Indian States?—It would not be true to say that all representatives of British-India have been opposed to a proposal of that kind; it is perfectly true that some of them have been.

7900. And strong opposition too, at any rate, against the feeling of the Indian States—I think that has been expressed by certain of the representatives of British-India. The problem, however, that faces us and that faces them no less than us, is the problem of bringing the Princes in.

Sir Austen Chamberlain.] Sir Akbar, I hope you will remember that this has interposed between us and the proper business of the afternoon, and will you make your questions as brief as possible?

Sir Akbar Hydari.] Yes. There is only one small matter about which I want to invite the attention of the Chairman, and, perhaps, of the Secretary of State, and that is that the record of my questions the other day does not recall one particular point which I pointed out about the quotation made by Lord Lothian from the Instructions. I am referring to Question No. 7513. He read out the following quotation: "To your Committee His Majesty's Government will look for complete and detailed proposals on which to base the revision of the franchise." Then he read out from the Prime Minister's statement to the effect that: "since upon the detailed proposals must largely depend the size and actual composition of the legislatures, His Majesty's Government hope that your Committee will be in a position in due course, so to frame their proposals as to present a complete and detailed scheme for the composition of each of the Provincial Legislatures", and from that it was that the Committee itself was asked to present detailed and

complete proposals for the revision of the franchise, and also for the composition of the Legislature, but not for its strength I wanted to point that out.

Sir Austen Chamberlain.] That will be clear on the record.

Sir Akbar Hydari.] Thank you.

Sir Austen Chamberlain.

7901. Then, Secretary of State, we now proceed to the consideration of the Judicature, Federal and Supreme Courts and High Courts, proposals 151 to 175. Do you wish to make any statement upon that subject before you are subjected to questions?—Yes, Sir Austen, I would like to make a short introductory statement, for this reason: The proposals in the White Paper, namely, 151 to 175, are not drawn in great detail; there are certain gaps in them that need filling up, and there are certain explanations that need to be made before we begin to discuss them. I would, therefore, ask the Committee to base their discussion upon the short explanation that I will now make in this preliminary statement. If my statement appears in any way to go contrary to any proposals in the White Paper, I hope that Members of the Committee and the Delegates will take my statement as their text rather than the widely drawn chapter, Part IV, in the White Paper. I begin, Sir Austen, by suggesting various heads under which this chapter may, in my view, be most conveniently discussed. Following the order of paragraph 5 of the Memorandum which I have circulated, I propose that we should deal, first of all, with the constitution of the High Courts. Under the proposals in the White Paper, the qualifications of the Judges, their number and their salaries and allowances will all, in effect, be regulated by the Crown in England, since they will be laid down in the Act itself, or regulated by Letters Patent or Orders in Council; and the actual appointment of the Judges will, as before, remain with the Crown, acting on the advice of the Secretary of State. On this main principle, I do not think there is likely to be any difference of opinion. We have, however, proposed certain changes of detail affecting the Constitution of the High Courts as at present laid down in

the Statute or otherwise. These are set out in paragraph 8 of the Memorandum that I have circulated, and I need do no more at the moment than draw attention to them. The next division of the subject would be the jurisdiction of the High Courts, that is, the extent and scope of their competence to determine cases judicially, whether in the Criminal or Civil sphere, and whether original cases or cases presented on appeal. Jurisdiction in this sense is determined by Indian Legislation: thus Indian Acts can, and habitually do, prescribe that particular matters are, or are not, to be subject to appeal to the High Court. The proposals of the White Paper on this matter can be summarised as follows:—Firstly, that the High Courts will have, at the time of the commencement of the Constitution Act, the jurisdiction then vested in them, but that thereafter this jurisdiction will be subject to provisions which may be made from time to time by the Federal Legislature and by Provincial Legislatures within their respective spheres. Paragraph 173 deals with that point. Secondly, that in virtue of various entries in the lists of subjects in Appendix VI, the jurisdiction of the High Courts will be regulated from subject to subject by that Legislature which is competent to legislate generally for that particular subject. I would refer Members of the Committee to List I, Item 63; List II, Item 30; and List III, Item 1: For instance, in regard to bankruptcy and insolvency, the Federal Legislature alone will be able to vary the competence of the High Court: The Provincial Legislatures alone will regulate the jurisdiction of the High Court in cases arising out of land tenures and title to land; while in regard to the great Indian Codes, Criminal and Civil, both Federal and Provincial Legislatures will have concurrent powers, subject to the principles laid down in paragraph 114 of the Proposals. This is, to some extent, an alteration of the position now prevailing, since it has been generally held that a Provincial Legislature has no power by its own legislation to vary the jurisdiction of a High Court, even in regard to a subject on which it can itself legislate, and that this power is confined to the Central Legislature. Our proposals, however, seem to us the

natural corollary to the requirements of Provincial Autonomy and to a statutory demarcation of Legislative powers. The third division of the subject is the general powers and authority of the High Courts as distinct from their strictly judicial authority—that is to say, the powers possessed by the High Courts over such matters as recruitment of the Civil Judiciary, and its day to day control, the enrolment of advocates and the like. These matters have been explained in detail in paragraphs 11 to 13 of the Memorandum. The most important of them, and the one to which the Committee have already given considerable attention, is the control of the Subordinate Judiciary. As has been explained in answers given to the Committee, it is not at present possible to place the Criminal Judiciary under the sole control of the High Courts, as the personnel of the Criminal Magistracy is supplied by men who discharge at the same time a number of administrative and Revenue duties; and, indeed, in many cases these are their major duties. If, at any time, it should become possible to separate these functions, it might be feasible to give the High Court a control over the Criminal Magistracy similar to that which it now enjoys over the Civil Judiciary. But this separation of functions involves difficulties, financial and otherwise, which will have to be solved by the local Governments in the future. As regards the subordinate Civil Judiciary, their regulation is placed by the Proposals of the White Paper as they stand (List II, Item 28), in the hands of the respective Provincial Legislatures, who would thus be at liberty either to entrust control to the High Court of the Province or to leave it in the hands of the local Government. Under this scheme, it would be open to the local Government, among other things, to prescribe the qualifications which would be requisite for admission to a subordinate judicial service. The discussions of the Committee appear to me to have revealed some apprehension of the consequences of making it possible for Provincial Legislatures to withdraw from the High Courts the measure of control in the matter of appointments at present exercised by them in actual practice. It may indeed be possible that the Committee will eventually decide

that it would be undesirable to give to the Provincial Legislatures the full powers proposed in the White Paper. I have, therefore, considered by what method the preservation of the interest of the High Courts in the recruitment and conduct of the subordinate Civil Judiciary, as explained in the Memorandum, could best be maintained. My suggestion would be to leave to the Provincial Legislatures the general powers which have been proposed in Item 28 of List II of Appendix VI, but, at the same time, to introduce in the Constitution Act a provision which would in one respect override those powers—namely, a provision vesting in the High Courts, as part of their administrative authority, power to select the individuals for appointment to the Civil Judicial Services, to lay down their qualifications, and to exercise over Members of the Service the necessary administrative control. This would be effected by a re-draft of the present Section 107 of the Government of India Act. The authority thus conferred on the High Courts would, however, be limited to the purposes defined, and would not, therefore, interfere with the powers of the Local Government, first, to fix the strength and pay of the Service to which the High Court would recruit, and, secondly, to lay down, if they so thought fit, any general requirements as to the composition of Services in respect of representation of classes and communities. The next and last head of the subject is Maintenance, in the sense of the financial provision required for the maintenance of the High Court buildings, for its own establishment and for its incidental contingent expenditure. This question is almost inseparably connected with the wider problem as to whether the administrative control of the High Courts themselves should be in the hands of the Central or of the Provincial Government. This problem has been dealt with so fully in the Memorandum that I have circulated, particularly in paragraph 14 to 21, that it seems to me to be unnecessary to say anything further at this stage by way of general introduction. Sir Austen, having made that preliminary statement, I am proposing, with your approval and with the approval of the Committee, to ask Sir Malcolm, Hailey to deal with the

more detailed and technical questions arising from it and to reserve for myself the questions dealing with the broader issues of policy.

Marquess of *Salisbury*.

7902. Sir Austen, I am sure that the Committee will allow me just to say this, that, in the face of the very important statement which has been made by the Secretary of State and which modifies very materially all the papers which we have hitherto had before us, it is not very easy to follow very closely the process of examination, and I hope that my perfunctory questions will be forgiven by the Committee in consequence. I understand that we begin with the appointment and position of the High Court?—Yes.

7903. The Secretary of State has told us, has he not, that the Judges of the High Court will be appointed by the Crown; that is, upon the responsibility of the Secretary of State?—Yes. May I, before I make that answer, apologise to Lord Salisbury for having made a long statement at the opening of this cross-examination which may modify some of his questions. I think, however, he will find, when he reads it, that it does not go as far as he suggested just now in his opening words. It does not substantially modify the foundations of the White Paper proposals.

7904. I am obliged to the Secretary of State, but I am correct, am I not, in saying that the Judges of the High Court are to be appointed by the Crown upon the advice of the Secretary of State?—Yes.

Marquess of *Zetland*.

7905. Is this the Federal High Court?—No, these are the Provincial High Courts. We are not dealing with the Federal Court or with the Supreme Court at this moment.

Archbishop of *Canterbury*.

7906. Do I understand from the Secretary of State that he does not expect us to deal with the Federal Court or the Supreme Court at all now?—I would not like to exclude any issue. My Memorandum dealt with the High Courts and

it was on that account that I was directing my attention, at any rate at the outset, to the High Courts.

Marquess of *Salisbury*.

7907. I only want to get this clear about the appointment. I understand that hitherto, as a matter of practice, the Judges of the High Court have been appointed after consultation with the Governors. Am I not correct?—(Sir *Malcolm Hailey*.) The usual procedure has always been that the Governor, after, as a general rule, consulting—or as an almost universal rule—the Chief Justice, makes his recommendation personally to the Governor-General and it is in that way that it arrives at the hand of the Secretary of State.

7908. I am much obliged. I want to make quite clear that the Governor will continue to give his advice as heretofore, I suppose, through the Governor-General, is it, or straight to the Secretary of State?—Through the Governor-General, and it is contemplated that he will continue to do so.

7909. In his action in that respect will he act in his discretion, or will he act upon the advice of his Ministers?—As it is a Crown appointment, he will act in his discretion.

7910. I thought that would be the answer, but I want that to be quite clear. The Governor-General, of course, deals with it in the same way. The first question I have to ask is: Am I to understand that the provision in the White Paper is still to prevail that the proportion of barristers who hitherto must go to make up the High Court—I mean, their origin being barristers—is to be abolished?—Yes.

7911. So that the practice hitherto, that a third of the Court must be trained barristers, will no longer necessarily prevail. The whole Court may be vakils?—There will be no proportion laid down at all.

7912. May I ask why the Government have made that change, or propose to make that change?—(Sir *Samuel Hoare*.) This is a question that raises an issue of policy and perhaps I had better deal with it in the first instance.

7913. If you please?—I would begin by saying that it is not a new question

at all. It is not arising out of the White Paper proposals. It is a proposal that has been under discussion for a good many years and five or six years ago it was intended to introduce into Parliament a Bill for the purpose of removing these various restrictive qualifications. The reason for the desire for a change is that it has been found, in practice, extremely difficult to work appointments satisfactorily when there is this hard and fast restriction between three classes of candidates, namely, a definite percentage to be barristers, a definite percentage to be advocates and a definite percentage to be members of the Indian Civil Service. In actual practice now, for some years past, the Governor-General and the Governors have found that conditions of this kind have sometimes compelled them to take men of less good qualifications for the post of a High Court Judge than they would have been able to take if their choice had been free. That is the sole reason of our proposing to withdraw this hard and fast restriction. We should still contemplate that posts would be filled from the three sources of supply, namely, barristers, advocates, and of officials from the I.C.S. or promoted from the subordinate judiciary service, but we feel that, in the interests of sound administration, and with the object of getting the best men to fill a vacant post, it is very difficult to continue to maintain the restrictive conditions that have been in force in the past.

7914. But should I not be accurate in saying that the connection with the British Bar is immensely valued, not only by Europeans but by all those who practise at the Bar in the Indian Bar, to whatever race they belong?—Certainly, and there would be no question whatever of excluding barristers. If a barrister had the best qualifications for an appointment, he certainly should be selected.

7915. But does not the Secretary of State think that at a moment like this it seems to have a very special significance and many people will think a sinister significance that the change is made?—I should hope not. Lord *Salisbury* will remember that there is no racial distinction in these conditions at all.

7916. No, I know that. It is a question of training, is it not?—It is a question of training. Sir Malcolm Hailey will amplify this answer. (Sir *Malcolm Hailey*.) I think something that fell from Lord Salisbury (I hope I am not wrong) led me to believe that he did not quite appreciate the way in which we look at the qualifications of the pleader—the advocate of the High Court, who is a pleader in India.

7917. A pleader is a vakil, is he?—Yes. I think that all Indian lawyers would agree and also I think all those who have taken part in the High Court work in India, that the qualifications of the Indian pleader are very high indeed. It used to be said that we sent home from India very large numbers of students to the Inns of Court because they were not able to pass our Indian law examinations. I have known many of them, and I am sure I am speaking by the book in saying so, but certainly it remains the fact that of men who have practised in our Indian Courts there are very large numbers indeed who are of the very highest qualifications comparable with those of the barrister class. I only mention that because, if it is merely a question of qualification, I feel it only just to say that the qualifications of the Indian pleader are recognized to be very high indeed.

7918. I am quite sure that is so, and I hope nothing I said would be thought derogatory, but I need not say that I have not asked this question of my own contemptible legal knowledge; but I know that it is felt in the very highest legal circles that it is a very curious and significant fact that at the time when the White Paper is put forward this change should also be proposed?—(Sir *Samuel Hoare*.) I hope nobody will read a sinister interpretation into this proposal at all. There is nothing more in it than what I have just explained. It is a proposal made in the interests of efficiency. It is for the Committee to consider whether the case for efficiency is justified. I believe it is.

7919. Of course, I need not say it carries with it the whole question of the appointment of the Chief Justice. He might also be a pleader. It would follow, would it not?—(Sir *Malcolm Hailey*.) Yes, that would follow.

7920. I think that the next division which the Secretary of State asked us to follow was jurisdiction. As regards the jurisdiction, I understand that that will be now largely subject to the Legislatures—the Federal Legislature in a measure and the Provincial Legislatures in a measure?—The composition of the Court will be laid down entirely by the Constitution Act. It will not be variable by any Indian Legislature.

7921. But as regards this jurisdiction I am sure the Secretary of State will allow me to say that it is difficult to be quite certain of the conclusions to draw from his Memorandum which he circulated. There are many points which are evidently left undecided in it. For example, would he follow this phrase on page 8 of the printed Memorandum: “Nevertheless, the individual powers and authority enjoyed in virtue of their Letters Patent by the High Courts,” (I am reading at the very middle of the page) “would be subject to an extent not yet explored to the jurisdiction of Legislatures in India according as they are covered by one entry or another in Lists I, II and III of Appendix VI.” I suppose that means not yet explored by His Majesty’s Government?—I think I might explain that phrase if you would allow me to do so. These three lists have always been put forward as rather illustrative than final, and, when it comes to the final determination of these lists there are certain points affecting jurisdiction which we shall have to consider. For instance, that one particular point that we mention there: The exact effect of the powers given in these three lists as affecting the authority of the High Court in the matter of the Bar. At present the authority of the High Court in the matter of appointing advocates is drawn from its Letters Patent, and, in looking through those three lists, it is not quite clear how far the Provincial Legislatures would, in the future, be able to affect the powers of the High Court in regard to the enrolment of the Bar. It is only in matters of that kind that that phrase applies. The position is that the actual content of the jurisdiction of the High Courts will be determined by the appropriate Legislatures as the subjects in regard to which they legislate fall within Lists I, II or III.

7922. But what, I think, is important for the Committee, if I may say so, to ascertain first is do the Government intend to leave these ambiguities, or are they all going to be settled somehow before the Bill is drafted?—(Sir *Samuel Hoare*.) Certainly they have got to be settled when the Bill is drafted.

7923. At the time the Bill is drafted, of course, but I think it would rather help if we could have heard beforehand a little what the views of the Government were. I understand that the scope of List II (I suppose it is No. 30, but I am not quite sure) is very wide. It would embrace all matters in regard to land, trade, moneylenders, police, prisoners, etc.; it is very wide indeed. Prisoners is particularly wide because am I not right in saying that that would involve the whole question of the liberty of the subject in India?—(Sir *Malcolm Hailey*.) No, it only refers to what I may describe as action taken under our Prisons Act which merely refers to the treatment of prisoners when actually convicted. If I may say so, the effect of allowing legislation by the Province in respect to prisoners would, in this particular respect of which we are speaking, only come in if there were some provision in the Jails Act which allowed an appeal in any particular respect to a High Court.

7924. I am very glad to have this explanation, but I am quite sure that Sir Malcolm will agree that it is difficult to read all that into the word?—I think when the final examination is made (and it will have to be a very technical examination) it will be found that the mere delimitation of subjects in these three lists will clear up any ambiguity which may still exist (and it is no very great ambiguity at that) as regards the powers of the two Legislatures respectively to deal with the jurisdiction of the High Courts. It will be cleared up by the delimitation arrived at in the Lists themselves.

7925. That may be so, but, Sir Malcolm, you will agree that there is an essential ambiguity always attaching to List III, because it is a question of concurrent powers?—If I may say so, the full preparation of that List should do away with any ambiguity as regards the subjects which are concurrent. The term "ambiguity" might perhaps be

applied rather to the fact that it is not quite known which of the two Legislatures will be finally dealing with those particular subjects, but the subjects should be clear.

7926. I am not going to be so silly as to quarrel about phrases with Sir Malcolm?—I hope I was not suggesting that.

7927. But, as I understand, practically under List III comes the whole of Criminal and Civil procedure, or the greater part of it. Is it really suggested by the Government that both sets of Legislatures should have power to modify the Civil and Criminal procedure of India?—Subject to the arrangement proposed in Proposal No. 114 of the White Paper, that is to say, that the Federal law will always prevail unless the Provincial law has been reserved for and received the assent of the Governor-General.

7928. No doubt the poor Governor-General is dragged in, I know, but the fact remains, does it not, that both the two sets of Legislatures are to have power over this Criminal and Civil procedure by which the greatest store is set in India on its stability. Is not that so?—That is so.

7929. It is immensely valuable?—(Sir *Samuel Hoare*.) I am not quite sure with what object Lord Salisbury is asking this question. Is he asking it with a view to proving that it would be better to keep it entirely Federal?

7930. My opinion is of no value. I should certainly have said on the face of it it should be entirely Federal?—If so (I do not want to press him to give a final opinion now upon a question of that kind) he will find it is a much more difficult question than I think he assumes. He will find that it is very difficult to preclude the Provinces from local variations within the wide field of the Criminal law and the Criminal procedure, and if, here and now, he says the whole of that is to be Federal and nothing else, he is really putting a block in the way of any variations of this kind, and he is putting a very formidable obstacle in the way of provincial autonomy.

7931. To me it is an amazing thing, I admit, that a Federal law upon a matter of that kind is to be upset by a

provincial law, even with the leave of the Governor-General.

Lord *Eustace Percy*.] May I ask a question to clear this up? Is it Lord Salisbury's point that a province faced by a grave situation menacing law and order should have no power to pass criminal legislation?

Marquess of *Salisbury*.] No, I was certainly not considering an emergency at all. This is the ordinary routine.

Lord *Eustace Percy*.] I do not know what Lord Salisbury calls an emergency, but there is a state of unrest. Special criminal legislation has to be passed. Does he mean that the province should not be able to pass such a measure to deal with disorder?

Marquess of *Salisbury*.

7932. I am sure it will only upset the proceedings of the Committee if I pose as a witness. Here is the case of a very elaborate and valued code of Criminal and Civil procedure, and it is proposed in the White Paper (and, as I understand, that is maintained in the present statement of the Secretary of State) that this procedure notwithstanding the jurisdiction of the Federal Court may be at any time with the leave of the Governor-General altered fundamentally by a Provincial Legislature, and I ask whether that is the settled policy of His Majesty's Government?—(Sir *Malcolm Hailey*.) Subject, of course, to the restriction to which Lord Salisbury has already called attention, that the Provincial Law must be reserved for and have received the assent of the Governor-General.

7933. It is not merely the Civil and Criminal procedure, but such very difficult subjects as the marriage law and the industrial legislation. They are all in the same position; they are all under List III. Is not that so?—The marriage law certainly.

7934. And industrial legislation?—The regulation of the working of factories, employers' liabilities, Trades Unions; yes, that is the case with all three. (Sir *Samuel Hoare*.) When Lord Salisbury is thinking over this question again, as I hope he will, because it is really a very complicated question, would he also keep in mind the present

state of affairs under which there are local variations carried out by the provincial governments, and with the approval of the Governor-General. This, therefore, is really continuing the existing state of affairs.

7935. I think I have appreciated that, but the Secretary of State will see, will he not, that it makes a great difference whether these matters are matters of pressure of a political majority?—I am not quite sure. I would have thought that in the kind of case Lord Salisbury contemplated, and, assuming that there is this pressure, the pressure will be in opposite directions from the representatives in the Province and the representatives in the Federal Centre. The pressure is not all going to be one way.

7936. You think the Governor-General will, as it were, play off one against the other?—I do not say play off one against the other, but I do say he will not be subjected to pressure only from one side.

Sir *A. P. Patro*.] The Provincial and the Central balances are maintained by this joint list, this concurrent list.

Marquess of *Salisbury*.

7937. I must not press that any further. With regard to the general powers of the High Court and the control over the subordinate Courts; As I understood the Secretary of State in his statement, the control of the High Court over the subordinate judges in civil matters has to be as complete as possible and maintained. Is that so?—Yes.

7938. But over criminal matters it is not so. I do not mean to say that there is any change, but in criminal matters the Magistrates are not now under the control of the High Court, and they will not be under the proposals of the White Paper? (Sir *Malcolm Hailey*.) On what you may describe as the administrative side, that is to say, the control over them as a service, they are under the Executive Government. On the judicial side they are completely under the control of the High Court.

7939. But their careers would be, if I may put it brutally, at the mercy of the Provincial Government?—Yes, it is the Provincial Government which does control their position in the Service.

7940. And their hopes of preferment, and so forth, their prospects of preferment, and so on?—Yes.

Marquess of *Salisbury*.] I need not call the attention of the Committee to the bearing of that upon the question of law and order. It has a direct bearing.

Sir *A. P. Patro*.

7941. How long has this administration been going on?—That state of things to which Lord *Salisbury* has called attention is due, as explained in the Memorandum, to the union of functions. If at any time it became possible to separate the Provincial Service officers into a judicial branch, and an Executive branch, then it would be possible to bring the Magistracy under the control of the High Court. I explained the other day, in answer to a question, that there were financial and other difficulties in the way of that at present.

Marquess of *Salisbury*.

7942. I am not to take that answer to mean that the Government are open to reconsider that decision?—I think that it must be, if I may say so (it is, perhaps, a question of policy) for the local Governments of the future who will themselves have to find the necessary money for effecting that separation.

7943. Then one last question. I understand that the Secretary of State gave an assurance to the Committee that in respect of maintenance of the equipment of the High Court, all that is required on that head would be safeguarded. I think in the Paper there is a paragraph on page 11, paragraph 18, which says: "As regards maintenance, the proposal is that this should be entirely a Provincial matter, but it is proposed, as already stated, to give the Governor a personal authority to certify after consultation with his Ministers, the amounts which he thinks are required for the expenses of these Courts" ?—Yes.

7944. Is that in the White Paper or is that new?—No. That is already in paragraph 98.

7945. At any rate, the Governor is to have a special power to secure proper maintenance for all the expenses of the

Courts: That is so, is it not?—Yes, that is so.

7946. In the first instance, it will be under the Government, but he can intervene, if necessary?—Yes.

7947. And do you think, Sir *Malcolm*, that in practice he will always be able to intervene effectually?—I think so, Sir, because judging, at all events, by past experience, that is not an item of expenditure about which a Legislature has ever shown any difficulty at all. There has been very seldom any attempt to cut down the expenditure on the judiciary.

7948. I am not quite sure whether that is quite the answer that I expected, because I wonder whether if there was a difficulty, the Governor would be able to intervene effectually?—He would certainly have the full power to do so.

7949. I am sure you must have appreciated that there has always been a doubt in the Committee as to whether he would be able to exercise his power?—I think that is one of the precise points on which he would find no great difficulty in exercising his power, because he would have so much support behind him.

7950. You mean public opinion?—Public opinion, and if I may say so, he would have, I think, behind him all the people, a very large class in India, who are interested in the Judiciary and in the law.

7951. Of course, when we are thinking of safeguards, we are always thinking of the case when the conditions will not be favourable, otherwise safeguards are not wanted. I am suggesting a case where, owing to their decisions, the judges have become very unpopular. Now, in a case of that kind, would this provision give them effectual protection? Of course, their own pay, the pay of the judges of the High Court, does not come under the vote of the Legislature at all.

7952. I agree as to his own pay, that is so; I am thinking of the equipment of the Court—I mean, the subordinate officials of the Court?—Yes. I remember one occasion only on which that has been challenged in a Legislature, partly for communal reasons, but I think I could only say that in my own opinion, if that kind of difficulty came before me as Governor, I should have less trouble in putting that right than I should have in



a great many other cases I could think of, such cases as charges for extra Police, and the like.

7953. I am sometimes doubtful whether so successful a Governor as Sir Malcolm Hailey does not sometimes forget that there may be others who are not quite so successful as himself and have to govern under conditions much less favourable than he has done?—(Sir Samuel Hoare.) We surely, have to take into account the general history of affairs for the last 15 years, and until Lord Salisbury has mentioned this terrible contingency, I have never heard anything about it at all.

7954. I can assure the Secretary of State it is not of my own motion that I have suggested it; it is upon advice by very high authority?—I would have thought from my general knowledge of the things, that do stir up trouble in local Legislatures and the things that do not stir up trouble in local Legislatures, this was not the kind of issue that was going to stir up trouble.

#### Archbishop of Canterbury.

7955. Secretary of State, I think you intimated that it would not be convenient for you now to discuss the Supreme Court, but that you would prefer to keep to the Provincial High Court?—I think, your Grace, that probably would be the most convenient course. I would not like to stop you or anybody else asking questions, if you so wished.

7956. But supposing we discuss now, as that is a matter with which you have been dealing, the High Courts, there would be opportunity given to us later to ask questions about the Federal Court or the Supreme Court?—I think certainly there must be at some time. My own view would be, and it is based upon two or three years of experience, that with the case of the Federal Court and the Supreme Court, what I believe really would best help the discussion would be if I could arrange a meeting between those members of the Committee who were specially interested in it and the Indian Delegates and officials like Sir Maurice Gwyer and Sir Claud Schuster, who know the intricacies of it inside

out. I should be only too delighted to arrange a meeting of that kind, if it was convenient to members of the Committee and the Delegates. I believe that we should greatly facilitate the discussion of a very technical issue if we started with a preliminary talk of that kind.

7957. That would be very useful, but, in the meantime, apart from the more technical questions of which you have been speaking, is it appropriate now to raise one quite general question, arising out of the evidence we have already had affecting the Federal Court?—Whatever your Grace wishes, so far as I am concerned.

7958. I will just ask it, because it is so general that it would not deal with the more intricate questions. The Secretary of State will remember that a good deal of evidence was given questioning the necessity of a permanent Federal Court and suggesting that for all the purposes for which a Federal Court would be required it would be quite feasible and very much less expensive to create a Federal Court *ad hoc* composed of such judges as the Governor-General might appoint. In other words, is it necessary for the class of business which would come before a Federal Court to establish and maintain, with all the expense involved, this separate Court. Would it have enough to do? Would it not be better to have a Court specially composed of selected judges to deal with matters when they arose?—I would think myself that it is almost inevitable to set up a Federal Court, and I think when we go further into the details, we shall find that temporary expedients of that kind, first of all, will not meet the object of the Federal Court, the main object being that it should be a Court of sufficient standing to carry weight both with British-India and the States; and, I think, secondly, we shall find that temporary arrangements of that kind, although they may appear to be cheaper, in actual practice are not cheaper, and that, in order to get barristers and judges, and so on, you will have to pay so much in fees for the deciding of a particular case that in actual practice there will not be any substantial saving at all, as compared with a Federal Court that, after all, need not necessarily be a very big Court.

Sir *Tej Bahadur Sapru*.

7959. Will they inspire any confidence in the public?—That is the first point.

Sir *Tej Bahadur Sapru*.] There will be utter demoralisation among the judges.

Archbishop of *Canterbury*.

7960. Then, passing to the High Courts, I think I am right in assuming from what you said, Secretary of State, that with regard to the qualifications of the High Courts, they will remain as they are; the only difference is that there will no longer be the requirement of keeping this particular proportion between the three classes?—Yes.

7961. There is no change of qualification—merely of proportion?—Yes; and there is no reason why in practice the proportions should not remain. What we are doing is, we are withdrawing the proportions as an actual condition. In practice as the best candidates are found in this particular proportion, they will be appointed.

7962. In other words, the present practice will probably continue but advantage will be gained if there was some conspicuously able person who might be appointed, though his appointment might go just over the fixed proportion?—That is so; it leaves the appointment and the field open.

7963. When you said just now that there were inevitable variations in Criminal Law and, possibly, Criminal procedure in the different Provinces, are these due to differences in local circumstances and characteristics, troubles, and the like?—(Sir *Malcolm Hailey*.) Yes. There has not been much disposition hitherto on the part of local Legislatures to vary the great framework of our Codes in any way, but at times it is necessary to make some small change to suit local circumstances.

7964. When you speak (this is my ignorance) of the Penal Codes, what is their sanction, authority, and extent in British India?—They prevail throughout British-India. It is a universal Code, like the Napoleonic Code, which regulates the Criminal law and the Criminal procedure in the Courts throughout British-India.

7965. Then at present there are many small variations of the application of these Penal Codes in accordance with the circumstances of different Provinces?—Many variations have been introduced.

7966. And there is nothing more than that, is there, contemplated in these proposals?—I should not myself anticipate that there would be any desire to alter the Code as a whole. At all events, it is not to the interests of the Legal profession to alter the Codes, which have a large amount of case law behind them.

7967. Just one question more, because many that I should like to have asked were asked by Lord Salisbury, and I noted the answers. What is the present practice with regard to appointments to the subordinate judicial offices?—We have described that for you at the bottom of page 8 and the top of page 9 of that Memorandum. If I may say so, Sir, the formal or legal authority enjoyed by the High Courts is, perhaps, in these respects a little less important than the authority they obtain by convention; that is to say, that in Madras the Munsif class of subordinate Civil Judges are actually appointed to the High Court. In other Provinces, the case may be that, though nominally they are appointed by the local Governments, yet by convention they are always the nomination of the High Court, sent to the local Government and accepted by it. The great mass of the powers enjoyed by the High Courts are obtained, as we have explained here, partly by legislation, but even more by convention and arrangement by the local Governments.

7968. Has there been any general movement of opinion towards the division between the judicial Executive functions and the Magistracy?—In a matter of controversy, I think for at least 40 or 50 years, we have made in different Provinces administrative arrangements to keep as far as possible the two functions apart, although we have not made formal arrangements to that effect; but so far there has not been any formal division of the Executive and judicial functions of the Magistrates.

7969. Is the difficulty of carrying that out mainly financial?—There are two difficulties. One is certainly financial, but another is a very grave doubt on the

part of many local Governments in the past whether, if you handed over to a Magistracy dependent entirely upon the High Court, the control of certain aspects of Criminal work, such as the use of the preventive sections you would maintain Law and Order as efficiently as you do at present I am not going into the merits of that, but those are the grounds of doubt.

*Sir Austen Chamberlain.*] *Sir Tej Bahadur Sapru*, I am informed that one reason for the Chairman having put down this subject this afternoon was that you particularly desired to put one or two questions upon it, and were returning to India to-morrow. If that is so, I think the Committee would like you to have the opportunity now.

*Sir Tej Bahadur Sapru.*] Of course, I am very much interested in the High Court, and perhaps, you will allow me to put a few questions ?

*Sir Austen Chamberlain.*] Yes.

*Sir Tej Bahadur Sapru.*

7970. Is it, or is it not, a fact, that the High Courts at the present moment represent, roughly speaking, the amalgamated jurisdiction of the two Courts which were in existence before they came into existence, namely, the Supreme Court and the Suddar Dewany Courts and other Courts in the Presidency towns ?—By virtue of the Indian Courts Act, about 1861.

7971. And so far as the Supreme Court established by the East India Company was concerned, it consisted wholly and exclusively of Magistrates and Judges. There were no I.C.S. appointed to the Supreme Court ?—I am afraid I did not remember that aspect of it.

7972. I suggest to you that the Provision with regard to the Members of the Civil Service being represented on the Benches of the High Court was due to two circumstances : Firstly, because there were Supreme Courts composed entirely of Barrister Judges and Suddar Dewany Courts consisting entirely of the I.C.S. men at that time, and, secondly, because you had not an indigenous Bar at that time of the strength which you have now, nor had you any subordinate judicial Service at that time ?—That is, no doubt, the reason.

7973. I will put this question to *Sir Malcolm Hailey* and, perhaps, with his long experience, he can answer it ? Is it, or is it not, the fact that during the last 60 years, since the High Courts have been established, a very strong indigenous Bar has sprung up in every part of India ?—That is so, certainly.

7974. And some vakil judges have acted as Chief Justices for considerable periods and with distinction ?—In acting appointments.

7975. And with very great distinction ?—I believe so, yes.

7976. Perhaps, you would answer that question, or somebody else might answer the question. Is it, or is it not, a fact that about the year 1911, the Inns of Court here raised this question with the Local Governments of India and the Government of India that the standard of men who used to come to England to be called to the Bar should be raised ?—Yes. I remember seeing the discussions on that myself, when I was in the Home Department.

7977. I am sorry I have got to put the question, but I must put it : Is it, or is it not, a fact that there is a general feeling in India that the type of barrister who used to be sent out from England 40 or 50 years ago were not really fitted for service in India. Occasionally, you got a good man ?—I think I would rather take it from *Sir Tej* that that is his impression, if I may.

7978. Let me state that definitely. We, in India, have felt very much that you have at times sent out Barrister Judges who ought not to have been sent out under any circumstances. I do say that. Now I put it to you, whether you can get barristers from India to act as Judges of the High Court who might in the ordinary course look forward to appointments in the High Court in London of the same standing—can you get that class of men for India who are generally appointed to the High Court here ?—We get them, perhaps, at a different stage in their career. I think that you would hardly expect me to answer that question, because it really does reflect on the capacity and character of many men in our High Courts in India. Perhaps, instead of asking a question of that point, if *Sir Tej* could give the Committee his

own impressions on it, I think it would be a little fairer, if I may say so, to us.

7979. I am prepared to make this statement: Occasionally, during the last 25 or 30 years you have sent men who have really contributed a great deal to the elucidation of our law, but very frequently, during the last 15 or 20 years men have been sent out to India, to the exclusion of local men who are far superior to them, who would not have, in the ordinary course, risen to any judicial appointment in London. Now, Sir Malcolm Hailey, I would put to you one or two other questions in regard to this matter. Hitherto, since the year 1861, the practice has been that the permanent Chief Justice of the High Court has been a barrister. Under the White Paper proposals it would be possible to appoint a Member of the I.C.S. as Chief Justice?—Yes.

7980. May I put it to you, whether you are aware that there is a very strong feeling in judicial and legal circles in India, and I can tell you, only three days ago, sitting here, I received a letter from an English Chief Justice (I am not at liberty to disclose the name) expressing a very strong feeling that the appointment of a Chief Justice should be confined to a Member of the legal profession, whether he is a barrister or an advocate, and that it should not be thrown open to a Member of the Indian Civil Service?—(Sir Samuel Hoare.) Sir Austen, this raises a vital question of policy, and, perhaps, I might intervene for a sentence or two. I took the view that if we were adopting a policy of a completely free field of selection, it ought to be a completely free field of selection. It should be based upon taking the best man, whatever were his antecedents. That being so, it seemed to me impossible to make a restriction upon any one of the three classes against rising to the top of his profession. We, therefore, in the White Paper proposals leave the field open for the selection of the judge, in the first instance, and we leave the field open for promotion for the three classes that are working upon that field afterwards. That is the basis of our proposal, namely, that we take the best man when we want a judge, and we take the best man when

we want a Chief Justice, whatever may be his antecedents.

7981. Now may I put to you one more question in that connection? Is it, or is it not, a growing feeling in India that the time has come when the High Court should consist exclusively of lawyer judges and that the I.C.S. men should not be appointed judges of the High Court?—(Sir Malcolm Hailey.) That is a view I have very frequently seen expressed, and of which I have heard naturally a great deal in the course of legislative debates, but I am not sure that I should describe it as a universal view, because there have been many testimonies in many different quarters to the value attached to the peculiar experience that I.C.S. officers have acquired before they come to the High Courts, and there have been many people who have felt that in view of the functions of administration and control exercised by High Courts in India, their inspection of Courts, their appointments of numerous sub-judiciary and the like, it was of great advantage to them to have among them judges who have that particular type of administrative experience, quite apart from any legal attainments they might possess, though, as Sir Tej I know will admit himself, there have been many I.C.S. judges who have had very high standards of legal attainments.

7982. I have always maintained that; some of them have. Now do you contemplate under your scheme to have a Minister of Justice in the Provinces, or some Minister to be responsible for the administration of Justice?—I think there would be among the portfolios one, whether under that name or not, who would discharge those functions; some reproduction of our present Home Department.

7983. Therefore, if you are going to have a Minister of Justice, why should you preclude him from advising the Governor or Governor-General as to the appointment of High Court Judges?—(Sir Samuel Hoare.) We have always assumed that the vitally important thing was to keep these appointments very impartial, and that it was therefore better to take them out of the hands of a transient Ministry. That is the main reason that has weighed in my mind.

7984. Would not the Minister of Justice or the Governor be naturally affected very much by the recommendation of the Chief Justice of the Court in the appointments of the Judges of the High Court?—I would have thought that there would have been a general feeling, in the interests of impartial justice, that these appointments had better not be party appointments in any sense of the word, and they had better not be appointments made, as I say, by a Ministry that may be there to-day and gone to-morrow.

7985. But is it not possible to provide against such dangers by requiring that the Chief Justice of the High Court must always be consulted, and that his view should be laid before the Governor or Governor-General so that the Crown may be advised accordingly? That happens at the present moment?—(Sir *Malcolm Hailey*.) Yes. It is, I imagine, a procedure which would invariably be followed, as it is at present. It is not prescribed in the Statute, but it is a procedure which is always followed; and I should find it a little difficult to suppose that a Governor-General would make a recommendation in regard to the appointment of a Judge unless the Governor had, first of all, quoted to him the opinion of the Chief Justice.

7986. In point of fact the Secretary of State makes a certain number of appointments to the Bench in the High Court in India; but does he, before appointing Judges in India, consult the local government or the Chief Justice of the Court always?—(Sir *Samuel Hoare*.) Certainly; in my own experience we always have the views of the Governor; and, if there was any disputed issue, we should probably have, through the Governor, the views of his Chief Justice.

Mr. *M. R. Jayaker*.] Not when you make appointments of local men?

Sir *Tej Bahadur Sapru*.

7987. Local men here?—In my own experience I should always consult the Governor-General and the Governor before I made any appointment of a British Barrister from here. Sir *Malcolm* tells me that he has always been consulted in cases of that kind.

7988. Now with regard to the provincialisation or centralisation of the

High Court, on the very ground that the High Court must be above all party politics, I suggest to you that the better course would be for you to attach the High Court to the Federal Government rather than to the Provincial Government. The farther they are away from local influences, the better. What is your view with regard to this matter?—I am fully aware of the very strong case that may be made for the proposition that Sir *Tej* has just advanced. I am equally aware of the strong case on the other side. The case that has impressed me in favour of the proposals that we are making is the difficulty of segregating the administration of the High Courts from the Provincial administration—the questions of personnel, expense, and so on. Secondly, the other difficulty that has weighed in my mind has been the question of the subordinate Judiciary. I felt that in the case of the subordinate Judiciary, they were in such close contact with the day-to-day work of the Provinces, that it was very difficult to take that block of administrative activities out of the Provincial field.

7989. I take it on this point you do not agree with the recommendations of the Simon Commission?—That is so.

7990. Do you think that the administrative difficulties which you have pointed out in that small pamphlet which you have been good enough to circulate are of an insuperable character, so far as the attachment of the High Court to the Central Government is concerned, namely, finding the money for buildings and things of that kind?—Are they of insuperable difficulty?—I certainly would not go so far as to say that the difficulties were insuperable, but the difficulties are very complicated, and as at present advised we take the view that the course we propose is the better course, namely, making clear the duties of the High Courts in the Constitution Act, keeping the High Courts as the judges in the Provinces of the efficiency of the service and leaving to the local government the formation of the general rules upon which the Provincial High Courts will work. That, in a sentence or two, is the picture in my mind. I do not myself say that it is not open to criticism; it is; nor would I say that the difficulties in the way of any other course are insuperable.

7991. Would you kindly tell the Committee what the general trend of judicial opinion in India is?—I could not give an answer upon a question of that kind. What I could say is that from the communications I have had from India I would certainly not say that judicial opinion was unanimous for one course or the other. I have had different opinions expressed to me.

*Sir Austen Chamberlain.*] Some of those sitting around me are a great deal attracted by Sir Tej's proposal. I hope, therefore, that the Secretary of State will consider how these difficulties could be overcome of which he speaks, if the Committee should take Sir Tej's view.

*Sir Tej Bahadur Sapru.*

7992. That is my suggestion, Sir, that the difficulties should be examined?—Yes.

*Sir Austen Chamberlain.*] I was supporting your view.

*Sir A. P. Patro.*] I would say that in the Provinces we do feel that the High Courts should be kept in the Provinces as they have been since their foundation in the Provinces. There is absolutely no ground for any complaint on the part of the public that the High Courts have not been fulfilling their purposes in the Provinces. By taking away High Courts from the jurisdiction of the Provinces to the Centre you are taking away the real power which the Government have got in the control over the Judiciary. Therefore, I suggest to the Secretary of State it would be a really insurmountable difficulty in administrative measures.

*Sir Austen Chamberlain.*

7993. We are not announcing a decision at this moment, but that is exactly the point to which we want the Secretary of State to direct his mind?—Please do not think we have not been directing our minds to this problem for the last six months—in fact, for the last two years; and I think the more Sir Austen Chamberlain goes into it, the more he will realise I think the strength of the argument upon both sides, and how very strong is the feeling *pace* Sir Tej Sapru for the kind of proposals I am dealing with to-day.

*Sir N. N. Sircar.*] My neighbour here said that the feeling in the Provinces was very great for keeping the High Courts in the Provinces. That may be the feeling in Madras; but I can talk of two Provinces who have a feeling just the other way about, and when I get my chance I will place my views before the Committee.

*Sir Austen Chamberlain.*] I am sorry I interrupted Sir Tej. Will Sir Tej please continue?

*Mr. Zafrulla Khan.*] May I submit that Muslim opinion has been unanimous on this point, that any proposal to transfer the Provincial High Courts to the control of the Centre would meet with the greatest possible opposition from them?

*Sir Tej Bahadur Sapru.*] On this question of the High Courts I have nothing more to put. I do not know whether I should be within my rights in putting any question about the Federal Court?

*Sir Austen Chamberlain.*

7994. What do you feel, Secretary of State?—I would much rather myself to-day have kept to questions about the High Courts; but would Sir Tej have a talk with Sir Maurice Gwyer and Sir Claud Schuster?

*Sir Tej Bahadur Sapru.*

7995. I am leaving to-morrow. Mr. Jayaker will go on with my views. I have expressed my views in a Memorandum I am submitting?—We will give very careful thought to your views, but I honestly feel that it would be more useful if you or Mr. Jayaker could have a talk with Sir Maurice Gwyer or Sir Claud Schuster on the subject.

7996. I have finished my examination on this particular point, but I am making a suggestion to the Secretary of State, that in regard to the relations of the High Court with the Government, a reference might be made to the Judges of the High Courts in India. I am speaking with the permission of a number of Judges, English and Indian, who spoke to me before I left India, and some of them have written to me here (it so happens that most of my correspondents are English Judges) and I

would like judicial opinion to be taken in regard to this matter, whether the High Courts themselves want to be attached to the Provinces, or to the Provincial Government, or to the Central Government. I am not putting it on the communal ground and I am not putting it on Provincial grounds. I am putting it on the ground that so far as the High Courts are concerned their position should be above all possible doubt?—I will certainly take note of what Sir Tej has just said, always remembering that we have based our proposals upon an accumulation of information that we have had from India, not excluding the views of the High Court Judges, or many of them.

Mr. M. R. Jayaker.

7997. May I put to you a question which arises out of one question which Sir Tej put?—Are you aware, Sir Samuel, that so far as the bulk of legal opinion in India is concerned if it was a choice of two alternatives they would much prefer that you kept to the present rule by which a barrister alone can rise to the position of permanent Chief Justice, rather than to have a rule which would make it possible for an Indian Civil Service man to be permanent Chief Justice?—If that were so it would probably point to making no provision at all. I explained just now that if you are going to make a provision it does seem to me to be unfair to open the field in one direction and not open the field in the other direction.

Mr. M. R. Jayaker.] The objection being mainly grounded on the fact that however eminent an Indian Civil Servant may be, he was at one time a member of the permanent services of the country, and the feeling is that the Chief Justice would always be a man who was brought up in the free atmosphere of the Bar (I am not speaking of anything racial); but he was brought up and trained in the free atmosphere of the Bar, and never belonged, at any stage of his life, to the permanent services.

Marquess of Reading.

7998. Just one question on a matter raised by Sir Tej—I think it was

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addressed to Sir Malcolm Hailey. Sir Malcolm, Sir Tej expressed criticism in regard to some members of the Bar from England who have been appointed Judges in India. Would I be wrong in saying that in India as elsewhere there are varying degrees of quality among the Judges of the High Court even among Indian Judges?—(Sir Malcolm Hailey.) That must be so.

7999. But, speaking generally, have you heard anything more than that kind of criticism, comparing one Judge with another, in a High Court?—Does it amount to more than that?—No, I myself had not heard it.

8000. May I put just one question to the Secretary of State? First, with regard to the case that was put just now, both by Sir Tej and Mr. Jayaker: Hitherto an Indian Civil Service man who has been a High Court Judge has not been eligible for appointment as Chief Justice. Has not that been so?—(Sir Samuel Hoare.) Yes.

8001. There was provision in the Statute that he must be a barrister?—I think so. (Sir Malcolm Hailey.) Yes.

8002. If you are going to change that is there not some danger of your getting a less trained lawyer as your Chief Justice if you took the Indian Civil Service man who has, of course, been engaged in other matters? Is there not something to be said for having the trained lawyer from the first who has not been occupied at all in the Indian Civil Service as the Chief Justice of the Court?—(Sir Samuel Hoare.) That may be so, but the whole basis of my argument is that you take the candidates on their merits and if that is a disqualification (I am not now saying whether it is or whether it is not) for a particular candidate being made Chief Justice, there is no reason than to make him Chief Justice.

8003. I will not press it further. I have only one question—it is the last I think I want to put to you—on making the High Court subject to the Federal Government and not the Provincial Government?—Yes.

8004. As I understand—you very clearly put it in your Memorandum—in substance, the difference that arises is in regard to minor matters of finance

and the accommodation to be provided in the High Court, is it not? I say that for this reason, Sir Samuel: You do make provision for the Judge to be appointed in the ordinary way by the Crown?—Yes.

8005. That is what happens. The salary is not votable?—Yes.

8006. So the Judge is on perfectly firm and safe ground in regard to that. The point of discussion as I have understood it, both from your Memorandum and elsewhere in India, is that if the High Court is subject in other matters to the Provincial Government, the questions that arise must be in relation to finance, that is, as regards appointments of minor officials and also as to the accommodation to be provided either by means of clerks, or it may even be of space. Is not that what happens? Does it go beyond that?—Sir Malcolm will amplify the answer. (Sir *Malcolm Hailey*.) Differences of opinion may arise, not only on pure financial questions of that type, but on general questions of control of the subordinate Judiciary. There is a rather wide range of questions on which you might very easily differ from your High Court, and it has often been felt—very generally felt by one class of thinkers—that those difficulties would be accentuated if your High Court was, so to speak, a central institution instead of having close relation with the Provinces. Your touch would be firmer.

8007. Would you tell me with regard to the High Court at Calcutta, that is one Court that has been under the Central Government and not under the Provincial Government. That is right, is it not—it is the exception to all the other High Courts. Questions have arisen, have they not, with regard to such matters as we are now discussing? Will you tell me—I am not sure that I recollect accurately—the finances and the accommodation such as I have just described had to be found by the local government, did they not, notwithstanding the control really was in the Central Government?—Yes.

8008. Is not that right?—That is so. The control was in the Central Government, but all finance, accommodation, and the like, had to be found by the

Local Government, and questions continually arose between us on that account. The High Court would apply for an additional Judge. The Local Government, with its eye on finance, said that the High Court did not do its work. The Government of India had to decide between the two, and the same with regard to accommodation. The High Court would say that they wanted more Court rooms. The Local Government would reply that they were very well fitted with Court rooms already. Again the Government of India had to decide between them. So, if you centralise the High Courts in regard to appointment, and the like, you must also centralise them in regard to finance, and the finance must extend to accommodation, and the pay of their establishment.

8009. What has not been clear to me in the discussion (not in what you have said, because that is quite clear) is assuming that you had the High Court under the Federal Government, is it suggested, do you know whether the Federal Government is to find the finance for those High Courts, or is it the Provincial Governments?—I think the suggestion has generally been that it has generally been recognised that the Central Government must also find the finance, and various suggestions have been made as to financial readjustments for that purpose.

[Sir *Austen Chamberlain*.] I understand Mr. Zafrulla Khan would be glad to have an opportunity of putting a few questions before we adjourn. I understand he represents a rather different point of view from that of Sir Tej Sapru.

Mr. *Zafrulla Khan*.

8010. Secretary of State, would you kindly inform the Committee how the proposal to centralise the control of the High Courts would affect the question of the recruitment of the subordinate judiciary in the Provinces?—(Sir *Samuel Hoare*.) I think myself it would create considerable difficulty. I do not offhand see how it would work out. What would Sir Malcolm Hailey say? (Sir *Malcolm Hailey*.) I think that if the High Court were centralised it would



be far harder to get the Local Government to extend to it, by arrangement, the authority which it now gives it in regard to appointment of subordinate judiciary. There would be more likely to be a kind of position of strain between them. (Sir Samuel Hoare.) Sir Malcolm means, does he, that as it is now, when they are both part of the same administrative machine, the Local Government pays a great deal of attention to the views of the High Court. (Sir Malcolm Hailey.) Yes. (Sir Samuel Hoare.) Whereas, if they were subject to different authorities, those kinds of relations would become more rigid, and might become more distant. (Sir Malcolm Hailey.) I think that would be the case, because I think it is almost inevitable that if the High Court were dependent on the Central Government, and its eyes, so to speak, were turned in that direction, if it had any complaint as regards the inadequacy of finance provided for the subordinate judiciary, it would tend to complain to the Central Government instead of to the Local Government. That would be a cause of friction which might react on the willingness of the Local Government to entrust it with the authority and the power that it now gives to it.

8011. May I put another aspect of the question, or, rather, stress one particular aspect of this question? It is not correct that, although it is extremely desirable, and nobody would object to the individual candidate for appointment to a subordinate judiciary post being selected by the High Court as a result of an examination or otherwise, communities in the Provinces will insist that, so far as the proportion of interests and classes, and other things are concerned, they must be determined by the Local Government?—(Sir Samuel Hoare.) I should say myself that that certainly would be the case, and, in fact, I understand, that that is the arrangement in certain of the Provinces now.

Sir A. P. Patro.

8012. In Madras it is so?—I had Madras in mind.

Mr. Zafrulla Khan.

8013. And in the Punjab?—In the Punjab too.

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8014. With regard to finance, suppose the High Courts were transferred to the Centre, and their expenditure was also placed upon the Central Budget, would not that seriously disturb the sort of arrangement between the Centre and the Provinces with regard to the allocation of sources of revenue which the Federal Finance Sub-Committees have been considering, and so forth?—I think it would certainly add a new and tiresome complication to the problem.

Sir A. P. Patro.

8015. A very great complication?—Considerable complication, and, in my own view, a very tiresome form of complication, namely, a complication concerned with all sorts of sundry and disconnected details.

Mr. Zafrulla Khan.

8016. If I might, with the Chairman's permission, depart from that aspect of the question, and draw the Secretary of State's attention to one or two matters arising out of what he has told the Committee to-day, may I draw the Secretary of State's attention to page 31 of the Second Report of the Round Table Conference, where it is said that the subject of the Provincial High Courts has received a certain amount of attention from the Federal Structure Committee, and certain matters are there laid down, the Committee being of opinion that the High Court Judges should continue to be appointed by the Crown; the existing law requires certain proportions of each High Court Bench to be barristers and civilians, and so on—that that need not continue?—Yes.

8017. "And they recommend that the office of Chief Justice should be thrown open to any Puisne Judge or any person qualified to be appointed a Puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued." It is the last sentence to which I wish to draw the Secretary of State's attention. He will also recollect that, during the course of the third Round Table Conference a Sub-Committee dealt with certain aspects of the judiciary. They were also unanimously of opinion that the

practice of appointing additional temporary Judges should disappear. The White Paper does contemplate that that practice will continue. May I inquire what are the reasons in support of continuing the practice which has been objected to unanimously by the Federal Structure Committee here?—I do not myself attach very great importance to this question one way or the other, but what we have found is this, that the Government of India hold the view that it is necessary to retain the power to appoint additional temporary Judges of this kind. This is a note I have upon it. They say it is uneconomical to make permanent appointments for the purposes for which additional Judges are sometimes appointed, namely, to meet exceptional pressure of work, nor is it possible for financial reasons to constitute the High Courts at such a strength that they will contain a reserve for leave vacancies which are necessary in Indian conditions. The White Paper proposes to place these appointments in the hands of the Governor-General personally, as being the best means of keeping High Court appointments, even of this temporary character, free from Party pressure.

8018. May I draw your attention to paragraph 169 on page 80 of the White Paper?—Yes.

8019. Where it is proposed that the age of compulsory retirement of High Court Judges should be fixed at the odd figure of 62. Is there any special reason why it should be fixed at 62 and not 60 or 65?—Sir Findlater Stewart remembers the point. (Sir *Findlater Stewart*.) I think it was a compromise. I think it was felt, so far as the Federal and Supreme Courts were concerned that you might have to go beyond the age of 60, which is at present the age for retirement and, having decided that you had to go at 62 for the Federal Court Judge it seemed unnecessary to make a distinction between the two classes of Court, and 62 was fixed as a common compromise figure. I do not think it was anything more than that.

8020. May I suggest this for the consideration of the Secretary of State when he is finally considering this matter, that the age of compulsory retirement for

Federal Court and Supreme Court Judges may be fixed at 65, and that of High Court Judges at 60. This would enable the selected Judges who are appointed to these higher Courts to continue for a longer time, and the present age of retirement for High Court Judges would be retained. It is not a very great question of principle, but I just draw attention to it?—(Sir *Samuel Hoare*.) I will certainly take note of what Mr. Zafrulla Khan has said. I would not like to express a view one way or the other off-hand upon it.

8021. May I draw attention to page 65 of the First Report of the Round Table Conference. It is the Report of the Services Sub-Committee. This is a question distinct entirely from the one to which reference has already been made, that a person who is eligible for appointment as a Judge would certainly be eligible for appointment as Chief Justice. I am not raising that, but, with regard to the future, a majority of the Services Sub-Committee recommended that recruitment for judicial offices should no longer be made in the Indian Civil Service. Those that are already there, and so on, I am not touching upon at all. What I am drawing attention to is the recommendation of the majority of the Sub-Committee that, in future, in fixing the cadre, the Secretary of State might take into consideration the conditions in India, that plenty of trained legal talent is available for appointment to judicial posts (subordinate, intermediate and high judicial posts) and that, in future, recruitment should not be made on that list?—(Sir *Malcolm Hailey*.) I think, if I may say so, that is a question that will arise in the course of discussing the Services, which will be separately discussed. Mr. Zafrulla Khan knows very well the grounds we have already taken in that matter.

[Sir *Austen Chamberlain*.] Sir Tej, your examination of the Secretary of State on Federation was interrupted this morning by our adjourning. I understand that you are leaving to-morrow?

[Sir *Tej Bahadur Sapru*.] I am leaving the day after to-morrow.

Sir Austen Chamberlain.] That is to say, before we can return to the subject. Would it be convenient to you in those circumstances to supplement your questions by supplying the Committee with a memorandum which could be printed in our proceedings at the proper time ?

Sir Tej Bahadur Sapru.] I had as a matter of fact written out a memorandum, and a fairly comprehensive one, on all the points that have been engaging the attention of the Committee. I am submitting it to-morrow to the Lord Chairman, and I will submit a copy of it to the Secretary of State, if he will allow me to do so. I will as soon as I reach India send to the Lord Chairman printed copies of it ; I have had no time to get it printed here. I have dealt with all these questions in my memorandum ; but there is one statement I should like to make, if I may be permitted to do so, on the question of indirect or direct

election. I have had no opportunity of expressing any opinion upon that subject. All I wish to say is that I am entirely in agreement with the views expressed by Lord Lothian and his Committee on that question ; and the four reasons assigned, at pages 22, 23 and 24, are reasons which I am prepared to adopt as my own reasons. I will not take up your time any further. That is to say, I am in favour of direct election for the reasons stated by Lord Lothian in his Report. I am strongly opposed to indirect election. That is all I would like to say at the present moment.

Sir Austen Chamberlain.] The Committee stands adjourned to 10-30 on Thursday morning, when we will take up the question of Finance, when I trust that the Lord Chairman will be here to re-assume his responsible and difficult duties.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to Thursday next, 10-30 o'clock.

27th July 1933.

Present :

Sir AUSTEN CHAMBERLAIN in the Chair.

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutchison of Montrose.  
Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaqat Hayat-Khan.  
Sir Akbar Hydari.  
Sir Mirza M. Ismail.

Sir Manubhai N. Mehta.  
Sir P. Pattani.  
Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

His Highness The Aga Khan.  
 Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. N. R. Jayaker.  
 Mr. N. M. Joshi.  
 Begum Shah Nawaz.

Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa' At Ahmad Khan.  
 Sardar Buta Singh.  
 Sir N. N. Sircar.  
 Sir Purshotamdas Thakurdas.  
 Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

*Sir Austen Chamberlain.*

8022. My Lords and Gentlemen, I regret to say that our Lord Chairman, though he is better, is not able to be present to-day, but he will be with us to-morrow.

To-day we further discuss the Financial Section of the White Paper. When the financial discussion was broken off on the last occasion, Sir Akbar Hydari mentioned that he would like to make a statement on behalf of the States. I propose, therefore, to call upon Sir Akbar Hydari first, and then to call upon in turn those Members of the Committee and Delegates who have given notice to the Secretary of State of their desire to ask him questions. I hope that the Committee and the Delegates will think that a convenient arrangement.

*Sir Akbar Hydari.*

8023. The statement which I am authorised to make on behalf of the Indian States' Delegation is as follows. If (as had emerged from the figures in the Hailey Memorandum) at the time of the date of the passing of the Constitution Act, the British-India Budget, Central and Provincial, as a whole, including the Budgets of deficit Provinces was a balanced one, the Indian States could immediately enter the Federation on the basis of the *status quo*, as then existing, so far as Finance was concerned. Secondly, that the White Paper proposals concerned may be accepted, provided that (a) the prescribed percentage to be retained by the Federation under paragraph 139 of the Proposals is not less than 50 per cent.; and (b) that it is understood that the White Paper proposals in paragraph 139 empower the

Governor-General, in his discretion, to suspend beyond the ten years reductions of assignments to Provinces, if he is of opinion that the continuance of the assignment would endanger the financial stability of the Federation. Thirdly, if at any time, even during the period of the first ten years the financial position becomes such that the Federal expenditure cannot be met from sources of Revenue permissible to the Federal Government, after all possible economies had been effected and the resources of indirect taxation open to the Federation exhausted, and the return of the Income Tax to the Provinces suspended, a state of emergency will be held to have come into being, when all Federal units will make contributions to the Federal Fix on an equitable and prescribed basis. Pending questions relating to individual States should be settled as early as possible by negotiation with the States concerned.

*Sir Austen Chamberlain.*

8024. Secretary of State, would you wish to make any comment at this stage upon the statement just read by Sir Akbar Hydari?—(Sir Samuel Hoare.) I think I would like to add this single sentence. It is satisfactory to hear from the representative of the States that at a point the States are ready to take a direct share in the financial burdens of the Federation. I would prefer not to go into further detail at this stage. I imagine that probably further details would emerge in my cross-examination, but I would draw the attention of the Committee and the Delegates to that one salient fact, namely, that at a point the States contemplate undertaking burdens other than the burdens of indirect taxation.

Marquess of *Salisbury*.

8025. Secretary of State, of course, I shall try to frame my questions having regard to the very important statement that has been made, but the Committee will realise that, perhaps, one might make a slip in respect of it, because it is rather difficult to gather its full import without further consideration. But, first of all, I would like to revert to the Federal Budget. As I understand, there will be in effect three Budgets. There will be the Budget, that is the expenditure which is required for the Reserved Services; there is the general Federal Budget, which is required for Federal Services and there are the Provincial Budgets?—Does Lord Salisbury put it in the form of a question?

8026. Yes?—If so, I would not agree.

8027. You do not agree?—No; there will only be two Budgets. There will be the Federal Budget, and the Provincial Budgets. The Provincial Budgets will have nothing whatever to do with the Federal Budget. There will be only one Federal Budget at the Centre, which will deal with the expenditure both of the Reserved Departments and of all the other Federal Departments, and for the provision of funds for the whole of this expenditure jointly.

8028. When the Secretary of State says the Provincial Budgets will have nothing to do with the Federal Budget, I understand (but, of course, I may be quite wrong) that the Provinces will have a share in the proceeds of direct taxation?—After the point set out in paragraph 139.

8029. At any rate, they will have a share in it, will they not?—At some date in the future.

8030. But evidently, they must be financed in some way or other—if they are in deficit, for instance?—Lord Salisbury, I think, must be thinking about the Income Tax.

8031. Of direct taxation. By all means, call it Income Tax, if the Secretary of State wishes, but I understand there is Corporation Tax, too, is there not?—Yes; I include that in the general term Income Tax. Lord Salisbury will see, if he looks at paragraph 139, that as things are now the time at which there can be a distribution of the Income Tax seems

somewhat removed. To start with, at any rate, therefore, there will be no complication of that kind. Supposing the time comes when there is a distribution of Income Tax between the Provinces and the Federation, then it will be done upon a definite plan, and the Provinces will know quite clearly that they are entitled to such and such a percentage. There will be no uncertainty about it.

8032. But, I suppose, that plan will depend upon the fiscal conditions of the moment?—No, not at the moment, it will be done over a period of years. If Lord Salisbury would read the paragraphs in the White Paper, he will see that we have dealt fully with those contingencies.

8033. If the Secretary of State wishes to read one of the parts of it, of course, I will wait for him?—I was rather assuming that the Members of the Committee had read the White Paper proposals. The paragraph to which I am referring is 139.

8034. I forgive the Secretary of State his sarcasm; but, at any rate, the Secretary of State will admit that the financial arrangements of the White Paper are very complicated, and, therefore, it is not surprising that we do not quite understand them all straight off?—Certainly.

8035. As I understand, what he says is that the contribution of direct taxation to the finances of the Provinces will depend upon a condition of things stretching over a period of time?—Yes. Put in a sentence, the conception of our plan is that Income Tax eventually is a tax, to a share of which, at any rate, the Provinces are entitled. At the same time, as things are now, the Centre requires all the resources that are now at its disposal. We, therefore, make a plan under which for the first three years of the Federation all the Income Tax is retained by the Federal Centre. After the period of the three years, a certain percentage of the Income Tax is allocated to the Provinces over the next period of seven years, the eventual allocation being between 50 and 75 per cent. to the Provinces. You see, therefore, that for the first period, there is no allocation; after that, there is an increasing distribution to the Provinces, eventually reaching whatever may be the percentage that is decided upon, but not more than 50 to 75 per cent.

Marquess of *Salisbury*.] That is quite sufficient for my purpose.

*Sir Austen Chamberlain*.

8036. I cannot quite reconcile, Secretary of State (it is doubtless my fault), what you say about the first three years with the terms of paragraph 139 of the White Paper. The passage to which I refer is: "For each of the first three years after the commencement of the Constitution Act, however, the Federal Government will be entitled to retain in aid of Federal Revenues"—I omit some of the words—a sum to be prescribed?—Yes; I ought to have made myself more clear. During the first three years we have a free hand as to what we retain, and if it was found that the Centre could not get on without the whole Income Tax, then we should have to retain the whole Income Tax.

Marquess of *Salisbury*.] It is quite sufficient for my purpose. What the Secretary of State has told us is that the Provinces are entitled to a share in the Income Tax and that share appears to be a variable one, an uncertain one, to be prescribed hereafter, at any rate in the first three years, it may be afterwards, as far as I know, and, subsequent years.

Earl *Peel*.] To some extent.

Marquess of *Salisbury*.

8037. That is to say, there is a doubtful variable amount, variable by certain authorities, of the Income Tax which is to be assigned to the Provinces or may be assigned to the Provinces?—Yes.

8038. Therefore, the Secretary of State will agree, will he not, that the amount of claim which the Provinces make, the effort they make to Income Tax must depend largely upon the expenditure which they think they are called upon to make?—It must depend, of course, upon two things: First of all, the demand of the Federal Council, and secondly, the demands of the Provinces.

8039. But it depends partly on the demand of the Provinces?—Yes, always assuming that we must retain at the Federal Centre sufficient funds to meet the charges and obligations.

8040. That is exactly the difficult issue which will have to be tried on each occasion. The Provinces will be pressing for more Income Tax and the Federal

authorities will be trying to restrict it?—I am not quite sure what Lord *Salisbury* means by each occasion. If he means this is going to be a question of controversy each year, then I do not agree with him. The percentage will have to be determined for a period, and under our proposals we determine it under Order in Council.

8041. Prescribed, no doubt, for a period, but sooner or later the matter will have to be reconsidered and re-adjusted and then there will be pressure from the Provinces to have more. I mean, that follows from what the Secretary of State has said?—Yes, except that under the White Paper proposals, the plan is prescribed by Order in Council, and the prescribed plan runs on for a period of years.

8042. But, I suppose, the Order in Council will not be made *in vacuo*; it will be after hearing what everybody concerned has to say about it?—The Order in Council I conceive will be made after the financial inquiry to which I have already alluded more than once in this Committee, namely, that either during the passage of the Bill, or immediately after the passage of the Bill, there will have to be an inquiry of this kind, and it will be based upon the result of that inquiry that the Order in Council will eventually be issued.

8043. But what is prescribed may vary at the end of a certain period, may it not? I do not know what the period is. I am told it is three years?—No; that is not so under our scheme. There is this period of 10 years during which an increasing amount up to a particular percentage is handed over to the Provinces. At the end of that time they get the full percentage, and they get no more.

8044. Is all that to be fixed straight off? What is prescribed, I suppose, may be more or may be less, may it not? It is not a certain fixed figure?—Only within the terms of our proposals, if our proposals are accepted—between 50 and 75 per cent.

*Sir Austen Chamberlain*.

8045. Would it work this way, that you would prescribe the percentage which might be 100 per cent., which would prevail for the first three years, and you

would at the same time prescribe the reduction in that percentage which would take place in each of the following seven years until you reached the final figure ? —Yes, that is so. It is a very accurate description of the White Paper proposals.

*Lord Peel.*

8046. It is clear that after the 10 years the two periods of three and seven years, the tax does go to the Provinces, because the last five lines of paragraph 139 are, I presume, governed by that period. In themselves it looks as if the Governor-General could suspend the reductions even after the 10 years, but that is not intended, I understand ?—No, it is intended that after the period the Provinces should be entitled to their full percentage.

*Lord Rankeillour.*

8047. When you say "Order in Council" do you mean the Governor-General in Council, or an Order in Council here ?—Order in Council here.

*Sir Malcolm Hailey.]* Paragraph 145.

*Lord Eustace Percy.*

8048. Is it not the fact that under the White Paper proposals from the end of the first three years the whole process will be completely automatic ?—(*Sir Samuel Hoare.*) Yes.

*Marquess of Reading.]* No, surely not after the three years.

*Lord Peel.]* The Governor-General can alter it, surely. It is not automatic.

*Lord Eustace Percy.]* Automatic subject to the Governor-General's power of revocation in an emergency.

*Lord Peel.]* That is a very large proviso.

*Lord Eustace Percy.]* Yes, I am aware of that, but subject to that ?

*Lord Peel.]* Yes.

*Sir N. N. Sircar.*

8049. Having regard to the answer of the Secretary of State, may I take it to be correct that if the view presented by Sir Akbar Hydari this morning is accepted it would mean this, that if after the end of 10 years you propose to give us, the Provinces 50 or 55 per cent., if that involves any direct contribution by the States then that has got to be stopped. The Provinces

must wait not for 20 years, but for 1,000 years if giving any portion of the Income-Tax involves any direct contribution by the States ?—I do not follow Sir Nripendra's question, but, off-hand, my answer would be 'No' to him.

8050. My question was this: Supposing after 10 years (but for the intervention of the States) if the Provinces were getting say 50 per cent. of the Income Tax, then the States take up the point that if 50 per cent. is handed over to the Provinces, that will involve a contribution to the Federal centre from the States; therefore the Provinces must not get the 50 per cent. Is that the way in which you understand Sir Akbar Hydari's statement made to-day ?—No, it is not at all.

*Sir Akbar Hydari.*

8051. It is not that ?—We can make that clear later on. Perhaps Sir Akbar would ask me some questions on that point later on ?

*Marquess of Salisbury.*

8052. I think this conversation has made it clear that, although there are certain mathematical principles which are applied, yet it will be in the power of the Governor-General to modify them ?—Certainly.

8053. The Governor-General will, of course, be accessible to representations from the Provinces ?—And also from the Federal Government.

8054. And also from the Federal Government, yes. I think I may say then that the Secretary of State agrees with me that there will be an opportunity, and, indeed, a very great temptation on the Provinces to press, if they are hard up, for a larger share of the Income Tax ?—There will be an equally great pressure, perhaps a greater pressure from the Federal Government to press the Viceroy not to sacrifice resources without which the Federal Government cannot meet its charges.

8055. The Secretary of State has anticipated the conclusion at which I have arrived. There will be two competing authorities who will want to have a share in the Income Tax ?—Yes.

8056. That is really the whole object of the questions I have addressed to him up to now?—Yes. Would Lord Salisbury carry it a step further and say that the reason there are these two competing authorities forces us to the suggestion that the decision must be a decision by Order in Council taken upon the Governor-General's advice at his discretion?

8057. Yes, I quite agree there is the protection of the Order in Council, but the Order in Council means, of course, the advice of the Secretary of State, and he will also be accessible to the same kind of pressures as the Governor-General is. This arises out of that, but what does he precisely intend to do in respect of the Provinces which are definitely in deficit?—I think we must clear off that deficit before the changes take place.

8058. Clear it off?—Clear it off.

8059. But it will be in the shape of an annual deficit, not a round sum?—The two main cases, of course, are Bengal and Assam.

8060. Yes?—I think there some arrangement must be made under which Bengal and Assam will start upon an even keel. I think it is possible to make that arrangement.

8061. I suppose the Secretary of State would not be inclined to tell the Committee what arrangement he has in mind?—I have already done no more than once, and Lord Salisbury will remember in the speech I made the other day, I alluded to the jute tax in Bengal.

8062. Yes?—That, at any rate, half the jute tax should be left with Bengal, and I included that idea in the general proposals that I made.

8063. It might happen that other Provinces were in deficit besides Assam and Bengal?—We should have to take the Provinces as they were at the moment when we made this financial inquiry, and, as things are at present, nobody can prophesy for the future one way or the other. I do not think there will be many provinces in deficit at that time. There certainly should not be many Provinces in deficit.

8064. I am sure the Secretary of State is wise in taking an optimistic view?—I am not taking an optimistic

view. I am taking the position as it is now.

8065. The Secretary of State has not anticipated that there will be any difficulty?—I never said that. Lord Salisbury must not make comments on my evidence which are not justified.

8066. I apologise. I put it too far. I do not want to press the Secretary of State, but what I meant to convey is that this rests upon a very important thing, the opinion of the Secretary of State?—No, that is not so at all. My opinion rests upon the present position of affairs when it looks at the end of this financial year as if only two provinces will be in deficit.

8067. I am sorry if I transgressed for a moment. I will leave it there. Now let me turn from the position of the Provinces to the Federal budget itself. The Secretary of State has said there will be only one Federal Budget, but there will be two claims upon it. There will be the claims of the Viceroy with his reserved services, and there will be the claim of the responsible Federal Ministers for the Federal expenditure?—Yes.

8068. They will be definitely competing for the money?—Certainly, each side will wish to have its demands met.

8069. There will be (we know there is) tremendous pressure by the Government, by the Ministers, to have a larger share of the Federal resources because they have not concealed the thought—those who are likely to be represented—that there is too much spent already on the reserve services. The Secretary of State admits that that criticism is commonly made in India?—Yes.

8070. And public opinion can be very influential indeed when the responsible government is established?—I would certainly admit that there is that kind of pressure now. Whether or not it will be greater in the future is a matter of opinion. Lord Salisbury has his view upon the subject. I have once or twice expressed mine.

8071. I suggest to the Secretary of State that there will be very strong pressure, very difficult to resist, for a diminution of the cost of the reserved services in order to pay for what may be very valuable objects under the re-



sponsible government?—My answer to Lord Salisbury is that there is that kind of pressure now. I do not see any reason why it should become more dangerous in the future.

8072. The Secretary of State does not think that the establishment of a responsible Government with a majority behind them will make it more difficult for the Viceroy than it is at present?—The establishment of responsible government will mean the inclusion in the Government of quite a number of Ministers and representatives who will be directly interested in keeping the defences of India in a secure state.

8073. I am not going to put my opinion against the Secretary of State's. At any rate, that is what his view of the matter is. May I go into another practical matter in which I hope I shall not show my ignorance: How is the payment of the non-votable services to be secured; how is it to be ensured? May I suggest to the Secretary of State that when the Estimates are framed there will I presume be a discussion between the Finance Minister and the financial adviser of the Viceroy as to how much will be required for the reserved services?—Yes. We had contemplated that normally, assuming that things are working reasonably, there would be discussions of that kind.

8074. Yes?—And probably discussions with the other Ministers.

8075. No doubt, with the Ministers as a whole?—As a whole.

8076. There will be this discussion. No doubt the Finance Minister may represent to the financial adviser that he is estimating for sufficient taxation to cover whatever arrangement they come to?—To cover not only whatever arrangement they come to, but what in the opinion of the Governor-General is necessary to finance his reserved Departments.

8077. Is not it clear that there will be a tendency of the Finance Minister to represent that, without increase of taxation, he can cover all the services? He will evidently do it. Every Chancellor of the Exchequer tries to do, that of course?—Yes. It is very much what happens now.

8078. Supposing it turns out that he is wrong and that at the end of the financial year it turns out that he has not estimated sufficient to cover the expenditure upon the reserved services: What will happen then? Will the reserved services have to give way, or will the other expenditure have to give way, or will there have to be Supplementary Estimates?—The reserved subjects, certainly, will not have to give way. What I imagine would happen would be one of two things: either the Governor-General would persuade the Federal Government to introduce a Supplementary Estimate (and I hope that that is the course that would be adopted if things were working reasonably between the two sides of Government)—

8079. Technically, it would not be a Supplementary Estimate. It would be a new Finance Bill and increase of taxation?—I am not distinguishing between the terms—I will say "introduce a new Bill." In the event of the Federal Government refusing to take action of that kind, then the Governor-General must act on his own initiative and he must make a financial proposal and see that it is carried through under which he will get enough money for his services.

8080. Would not the Secretary of State agree that all that process would tend to put great pressure on the Governor-General, to try to meet the Finance Minister as far as he can?—I think the pressure would work both ways. I think, also, if I were Finance Minister I would much prefer not to get to a crisis of that kind and to take the action myself if it was a reasonable demand.

8081. It would depend what pressure was put by the majority by whose authority you sit as a Minister, would it not?—There again one has to take into account that there will be a large number of members, both of the Legislature and a substantial number of members of the Government, coming particularly from the Indian States, who will be very much interested in questions of defence.

8082. I am quite sure the Committee sees what the point of the question is and also sees the point of the Secretary of State's answer, and I will not put it any further than that. I should

certainly have thought that the change to a responsible government would constitute a very much more formidable pressure on the Governor-General than under the present system?—Lord Salisbury bought, however, to remember that at present, when all the Departments are reserved, it seems to me that public opinion is much more strongly mobilised against them, but that it is arguable that when the Indians themselves are members of a responsible government they will look more sympathetically at these problems of defence, and that the Governor-General in practice may often find that he has more support behind him than he has at present.

Marquess of *Salisbury*.] It is certainly arguable. I will not put it higher than that.

Sir *A. P. Patro*.] May I say what is happening every day under our present dyarchical system with reference to Law and Order? During all the years that we have been working there has not been a conflict between the reserved subjects and the transferred subjects. Ministers and members sit together. We scrutinise the proposals made by the Heads of Departments. When the Heads of Departments first make the proposals the Secretariat examines them; then they are forwarded to the Finance Department; the Finance Secretary and the Finance Member scrutinise them. Then they come before a sub-committee of the Cabinet, and on the recommendation of the sub-committee the whole Cabinet, members and ministers, sit together. In that Cabinet we first see what is the amount available for distribution. The reserved subjects are amply provided for first in regard to the preservation of Law and Order. There has not been any occasion where there has been friction between the reserved subjects and the transferred subjects. The transferred subjects consist mostly of development departments. We fight with our colleagues for more money for expansion of more subjects: expansion of education, public health and all that; but we also realise, at the same time, that the reserved departments must be maintained properly and efficiently. Therefore, we come to an amicable understanding. Ultimately, as has been very rightly pointed out by the Secretary of State, the Governor-General persuades both of them to

come to an understanding. We do come to an understanding at the time the budget distribution is made. Then the whole matter works smoothly. When the budget goes before the Legislature the transferred side supports the demands of the reserved side. When they come to the budget the right of the Council is to cut down any subjects but the Ministers support the reserved side by their voting strength behind them. Therefore, all this seems to me, with due deference, not to be a fact and is not consistent with the way in which we have been working as a matter of experience. The practical necessities of the situation show that these difficulties are more imaginary than real.

Marquess of *Salisbury*.

8083. Just in order to lead up to another thing, might I ask the Secretary of State to confirm if I am right in saying that he does not contemplate the possibility, owing to financial reasons, of bringing the Federation into existence immediately?—I gave a very full answer to this question the other day; I would prefer to stand by the words I used then.

8084. Indeed, I gathered from him that he did not even think it possible to bring the Provincial Constitution into existence immediately while Finance stands as it does?—There again, I dealt in some detail with that question the other day, and I would prefer that answer to stand.

8085. I have a difficulty in understanding quite how the financial relations between the Federal Government or the Home Government and the Provinces are to be made sure. Of course, the financial position of the Provinces must depend upon the two sides of the account. How much they spend, and what comes in in taxation. Now what guarantee or assurance will the Central Government have of the proper conduct of these matters by the Provinces? Will they have Inspectors?—No, certainly not.

8086. Then how will they know that the taxation which is due from the Provinces is being properly raised?—Lord Salisbury's question suggests a conception of Provincial Autonomy that is very different from mine. I do not in the least contemplate a system under which the

items of the Provincial Expenditure will be checked by officials from the Federal Government. I assume rather that financial arrangements will be made under which the Provinces will start upon an even keel. Having started upon an even keel, they must work out their own salvation. They must balance their budgets. If they do not balance their budgets, then they must impose more taxation or there must be a change of Government, but they must be free then to work their own Budgets, always with this reservation, that if they are in debt to the Centre, then the Centre can intervene in the cases in which they wish to issue Provincial loans; but, apart from that, I look to the Provinces to raise their money upon the lines set out in the White Paper in their own way, and to balance their own Budgets; and if they do not balance their own Budgets, then their sins will be upon their own heads.

8087. But I thought in respect of this financial legislation, indeed, with regard to all Federal legislation there must be some agents of the Federal Government to see that their decisions are carried out?—I do not know what decisions Lord Salisbury has in mind.

8088. All sorts of laws. Just to answer the question of the Secretary of State, there would be all sorts of laws?—But Lord Salisbury is asking me questions about finance. What kind of Federal financial agents does he contemplate having in the Provinces?

8089. Let me say assessment, for instance?—Assessment for what purpose?

8090. Of course, the Provinces will pay Income Tax, will they not?—Yes. With assessment for Income Tax the present arrangement would go on.

8091. What is the present arrangement?—(Sir *Malcolm Hailey*.) The assessment of Income Tax at present is a Central Department; it was taken over by the Centre from the Provinces about 10 or 11 years ago. Assessment is now made by Central Agents and the collection is effected through the Province.

8092. So that there will be a Central Agent in the Provinces having regard, at any rate, to assessment?—Only assessment of a Central tax, like Income Tax. Would you permit me, Sir, to say, that at present there is no financial super-

vision over the Provinces. We assess and raise our own Land Revenue; we deal entirely with our own Excise. A few of the stamps, the ratio of stamp fees, etc., are subject to Central Legislation, but a great part of them to Provincial Legislation. Registration is entirely a Provincial head, and entirely managed by it, so, of course, with the other sources of Income, such as Forests, Irrigation, and the like. The only way in which we come financially in contact with the Centre in the sense of financial control is that the Centre, is on behalf of the Secretary of State, charged with seeing that we do provide the scheduled rates of pay for All-India Services, and, as the Secretary of State has just said, if we get into debt, that is to say, if we are in deficit, then that constitutes an overcraft on the Centre, and we may have to take a loan from the Centre to meet that overdraft. In that case, if we propose to raise a loan either for productive or non-productive purposes in the Province, then the Centre does intervene as regards the terms of that loan and the like. That is the extent, at the moment, of financial contact between the Centre and the Provinces.

*Sir Reginald Craddock.*

8093. Might I just ask one question on that, and that is how far the collection of the Income Tax is effected by Central agency or by Provincial agency?—Notices, warrants, etc., are issued by the Central agency. Then if there is any default in payment, application is made to the local Revenue Authorities, who carry out the execution or prosecution, as the case may be.

*Sir Austen Chamberlain.*

8094. Am I right in assuming that the Customs Service would be a Federal Service?—(Sir *Samuel Hoare*.) Yes. (Sir *Malcolm Hailey*.) And is at present Central.

8095. And the Excise Service?—No; Excise, as such, is purely Provincial. Of course, there is that part of Excise which is collected as part of the Customs—that is Central, but all the rest of the Excise is Provincial.

8096. What is the salt duty?—The salt duty is separate; that is Central.

8097. Collected as part of the Customs?—No, salt duty is collected partly as Customs duty and partly in the exercise of the Government monopoly, and that is Central. Opium, again, is Central.

Lord *Eustace Percy*.

8098. Am I not right in saying that there are certain Excises, like petrol, which are assessed and collected by Provincial agents, but the proceeds sent to the Centre?—That applies only to the producing Provinces of Burma and Assam.

Marquess of *Salisbury*.

8099. At any rate, there are a good many points of financial contact in the carrying out of the fiscal policy between the Centre and the Provinces?—(Sir *Samuel Hoare*.) Yes, contact but not control. Contact mainly over the field of Customs and Income Tax, apart from the other minor instances quoted by Sir *Malcolm Hailey*, but no question of a detailed interference in the Provincial budgets or supervision of that kind.

8100. The Secretary of State makes a distinction between contact and control. He reminds me of a celebrated observation of Mr. Gladstone: "General Gordon was hemmed in, but not surrounded." You remember the historical occasion?—I remember the historical occasion, but I do not see the relevance of the Noble Lord's observation.

Archbishop of *Canterbury*.

8101. Secretary of State, do I understand that you do not contemplate any officers of the Centre in any way interfering with the collection of the Income Tax in the Provinces?—(Sir *Malcolm Hailey*.) The Centre would continue to assess the Income Tax as before and collect it up to the extent of sending demands on the assessees. It would merely fall on the Province to take action if those demands were not paid. That falls on the Province because it involves a legal process, and the legal processes of this nature rest with the Provinces as part of their Provincial work. That, I think, is the only extent to which the Province and the Centre come into con-

tact over Income Tax, and it is a very small extent.

Dr. *B. R. Ambedkar*.

8102. May I draw the attention of the Secretary of State to the fact that under Proposal 70 of the White Paper, the Governor has the special responsibility to secure the execution of orders lawfully issued by the Governor-General?—(Sir *Samuel Hoare*.) Yes.

8103. If the Governor-General issued any orders with respect to finance which required the Provincial Governments to execute them, the Governor would see that they were executed?—Yes; in the field of Federal taxation that would be so.

8104. Any orders issued by the Federation which required that they were to be executed by the Provincial Government, there is a special responsibility on the Governor to see that those orders are executed?—Yes. Orders issued by the Governor-General.

Sir *Hari Singh Gour*.] Lawfully issued.

Dr. *B. R. Ambedkar*.

8105. Lawfully issued, of course. Another question. In that section of the White Paper proposals which deals with the administrative relations of the Provinces and the Centre—I am speaking offhand—I think provision is made that whether the Provincial agency will be utilised by the Centre in carrying out the administration of Central subjects is a matter for the Province; it may employ its own agency?—Yes, I have always hoped, judging from the experience of other Federations, that we should duplicate as little as possible administrations, and speaking generally, it is much better that the Provincial administration should carry out the directions of the Federation within the Federal field rather than that you should duplicate these administrations all over India.

8106. What I was trying to point out was this, that if the Provincial Governments turned out to be recalcitrant and not amenable to the control of the Central Government, the Centre is not bound to employ the agency of the Province and can employ their own agency.

in the administration of Central subjects ?—That is so.

Marquess of *Salisbury*.] Now if I may take you to a totally different part of the subject, which bears upon the very important statement which Sir Akbar Hydari has made to the Committee this morning I hope I shall not fall into any error—Sir Akbar will correct me in a moment if I do—I understand that what his statement amounted to was this, that in an emergency—I think he used the phrase “in an emergency”—the States would come to the rescue of the Federal Government and would contribute something out of the ordinary. Is that so ?

Sir *Akbar Hydari*.] If you will kindly complete your question, I will be able to say.

Marquess of *Salisbury*.] Will contribute something out of the ordinary, I said. Let me put it in this way. Would it be true to say that the ordinary contributions of the States were confined to indirect taxation ?

Sir *Akbar Hydari*.] That is so, but there is also the question of a contribution which in the British Provinces would fall in the nature of a Corporation Tax ; and the Indian States would also levy a Corporation Tax or give an equivalent thereof to the Federal Government. I do not know whether you consider Corporation Tax to be a direct tax or an indirect tax ?

Marquess of *Salisbury*.

8107. I believe Corporation Tax is counted as a direct tax, is it not ?—Yes.

Sir *Akbar Hydari*.] There is that exception when you use the word “indirect.” I wanted to qualify it.

Marquess of *Salisbury*.

8108. May I ask the Secretary of State this : As the Income Tax is changed from time to time for British-India, will there be a corresponding change in the States' contribution ?—I do not follow the question.

Earl *Peel*.

8109. If it is a surcharge, it will be, I think will it not ?—Yes. The position is this, is it not—here again Sir Akbar

will correct me if I am mis-stating the position : The States will not contribute anything by way of direct taxation to the Federation except in the two instances to which I am going to refer, and even in those cases, the States will be at liberty to make a contribution in lieu, if they prefer it, rather than to submit to direct taxation. The two points that I have in mind are, one : Corporation Tax after ten years ; two : Special surcharges on Income Tax as set out in proposal 141, and also paragraph 67 of the Introduction to the White Paper. That is, in a sentence or two the general position, is it not ?

Sir *Akbar Hydari*.] Yes.

Marquess of *Salisbury*.

8110. Would it follow then that as the rate of Income Tax may vary in British India, there will be a corresponding variation in the States in their contribution ?—There would only be a variation, if the Corporation Tax varied. If the Corporation Tax was put up, then the corresponding contribution from the States would be proportionately greater. If the Corporation Tax was lowered, equally the States' contribution would be smaller.

Sir *Austen Chamberlain*.

8111. Would not that apply also to surcharges for Federal purposes on all taxes on income other than agricultural income under paragraph 141 ?—Yes, I think it would.

8112. It says : “While such surcharges are in operation, each State Member of the Federation (unless it has agreed to accept Federal Legislation regarding taxes on income as applying to the State) will contribute to Federal Revenues a sum to be assessed on a prescribed basis.” That is, I presume, equivalent to what the Income Tax would have yielded in that State ?—Yes, that is so.

Earl *Peel*.

8113. And it is true, is it not, that no part of that money so raised goes to the Governors' Provinces for entirely Federal purposes ?—Yes ; it is a special tax raised specially for the needs of the Federation.

Marquess of *Salisbury*.

8114. Then it seems to follow, does it not, that however the exact form is prescribed, in fact, the Federal Legislature will be empowered to impose direct taxation upon the States?—No. I am afraid I have not made myself clear. The Federation will impose a Corporation Tax, and will impose it upon the British Provinces. The States in the circumstances that I have just described will either impose a Corporation Tax of an equivalent amount themselves in their States, or they will make other arrangements under which they can get an equivalent sum, and they will pay the equivalent sum into the Federal fisc.

Marquess of *Salisbury*.] I was not very inaccurate, was I, in saying that according to the vote of the Federal Legislature so will vary the taxation, or, at any rate, the contribution of the States..

Sir *Akbar Hydari*.] To this extent.

Marquess of *Lothian*.] So it will in the case of Customs?

Marquess of *Salisbury*.

8115. Yes?—Where I do not agree at all with Lord Salisbury is when he says that the Federation will be imposing direct taxation upon the States. I do not accept that view of the situation.

Sir *Austen Chamberlain*.] Will it be correct to describe it as levying a precept upon a Prince for a certain sum of money which the Prince will provide in such manner as he thinks fit?

Marquess of *Salisbury*.

8116. And which will be equivalent to the corresponding burden imposed in British India?—That would certainly be a much more accurate description in my view.

Lord *Rankeillour*.

8117. That applies to the variable surcharges under 141 as well as to the Corporation Profits Tax?—Exactly; I just said so.

Marquess of *Salisbury*.

8118. So the amount of the contribution of the States which they may levy

as they think fit will depend on the vote of the Central Federal Legislature?—In the circumstances which we are discussing and with the representatives of the States taking part in the Legislature and taking part in the Federal Government.

8119. I do not want to ask anything more on that head, but only one further question, and that is really merely for the purpose of clearing things up. May I ask the Secretary of State to look at paragraph 48 of the Proposals; it is on page 49?—Yes.

8120. It is merely to find out the exact position of the Council in respect of financial legislation. I understand that the Council of State will not be allowed to initiate financial legislation. Is that so?—I suppose, technically, there ought to be a distinction drawn between demands for grants, that is, supply, and the more general term "financial legislation."

8121. But even as regards demanding a grant, it can only do that in certain circumstances. May I read it? It is quite short, so perhaps the Committee will allow me to read it: "The Demands as laid before the Assembly will thereafter be laid before the Council of State"—then come the powers of the Council of State which follow: "which will be empowered to require, if a motion to that effect is moved on behalf of the Government"—that is usual in all constitutions; it comes from the Government—"and accepted, that any Demand which had been reduced or rejected by the Assembly shall be brought before a Joint Session of both Chambers for final determination." So that it only will have regard to Estimates which have been reduced or rejected by the Lower House?—Yes.

8122. Therefore, it will not be possible for the Council of State to reject an Estimate *proprio motu*?—No; that is so.

8123. It will be in the power of the Assembly to do that?—Yes, and it will be in the power of the Governor-General to bring the vote to the Council.

8124. Not unless they have been rejected by the Assembly. In other words, the operation of the Council of State does not begin except in cases where the

Assembly has rejected or reduced an Estimate ?—Yes, that is so.

8125. The Council of State could not say of its own motion, "The Government is extravagant ; we desire to reduce its estimates." They could not do that ?—No, not under these proposals.

8126. I wanted it to be clear because sometimes the language is used (I do not say by the Secretary of State) that the two Houses are on an equal footing in matters of finance ?—Shall I put my interpretation of Proposal No. 48 into a sentence ?

8127. Yes, please ?—Under Proposal 48 of the White Paper the Council of State cannot itself add to or reduce or reject any demands for grants, but it can, if it accepts a government motion to that effect, cause to be referred to a joint session final consideration of any demand for grants which the Lower House has reduced or rejected.

8128. So it does not begin to operate and provoke at the instance of the Government this joint session, except in matters which have been rejected or reduced by the Lower House ?—That is so.

8129. So that, if it were thought that the Council of State would be a protection against extravagance, that view would have to be accepted with great limitation ?—I am just thinking the position out. It is true to say that the position is as I have stated it, with grants ; but the Council of State would certainly have a *locus standi* with a budget and could, under our proposals, reject a budget.

8130. Could it reject the whole budget ?—It could reject the whole Finance Bill.

Lord *Rankeillour*.] And amend it and reduce taxation.

Dr. *Shafa'at Ahmad Khan*.

8131. That would be taxation ?—I will ask Sir Malcolm to amplify what I have said, because budget means one thing to us and it means another thing in India, rather. (Sir *Malcolm Hailey*.) Unless the procedure now in force is altered we should presumably continue as at present, merely to place a budget before the Legislature, and under the general

terms of that budget we should apply for demands for grants, that is to say, for supply. Unless fresh taxation were required, no further legislative Act would be required on the part of the Legislature.

Marquess of *Salisbury*.

8132. I quite understand, if he will forgive me for interrupting him, what Sir Malcolm Hailey means is that there would be no Appropriation Bills in the Constitution ?—No ; therefore, the Council of State could not reject a budget as such. What it could do, apart from the power in regard to demands for grants which has just been described under No. 48, would be to reject a Bill for taxation.

8133. A Finance Bill it could reject ?—A Finance Bill.

Lord *Rankeillour*.] Could it amend a Finance Bill by lowering a particular tax ?

Sir *Phiroze Sethna*.] It has done so.

Sir *Hari Singh Gour*.

8134. It could do so ?—If it did so, then the case might subsequently have to come to a joint session, because there would be a difference between the two Houses.

Marquess of *Reading*.

8135. If there is no question of further taxation, and it is merely a question of the demands that have been made, am I right in understanding that that question would not come before the Council of State at all, because it would be for the Assembly to deal with it, and assuming the Assembly accepts it and there is no further taxation, there is no reason why it should go to the Council of State. Is not that right ?—That is so. If one were to assume that the Government were to put its budget before the Federal Assembly and the Federal Assembly accepted the whole of its demands for grants, then, although the demands would be subsequently laid before the Council of State, there would not have been any of these reduced demands on which the Council of State could, at the instance of Government, take action. It would, therefore, debate the budget or the demands for grants,

but it would not go into any legislative action.

Marquess of Reading.] No.

Sir Austen Chamberlain.

8136. May I get this clear. In our own financial system in this country certain of the most important taxes are never voted for more than one year?—Yes.

8137. In order to oblige the Government to come annually to Parliament for a vote of those taxes, even although they be unaltered in amount?—Yes.

Sir Austen Chamberlain.] I understand that that is not the Indian system.

Sir Hari Singh Gour.

8138. That is the Indian practice?—There is no Statute to that effect at all. Purely as a matter of convention we have placed one Finance Bill annually before our Legislature, but, as I think I explained the other day, that is just a matter of convention. If it were to be made a part of the Constitution it would be necessary now to place that in the Statute and put it therefore beyond a stage at which it was merely the option of Government to introduce an annual Finance Bill as it is at present.

Sir Austen Chamberlain.

8139. I imagine there are other members of the Committee besides myself who do not quite understand these matters. What does the annual Finance Bill contain? Does it contain a tax which you have only asked for for one year, and want to renew at the same rate?—Yes.

8140. You reserve one tax for annual review?—Yes.

Marquess of Salisbury.

8141. To come back and conclude my point, although the Council of State will have complete co-ordinate authority in respect of the Finance Bill, it will have a very much lower authority than the Assembly in respect of what you call demands, or what we should call estimates?—Yes.

Marquess of Salisbury.] In point of fact, it could not reject *proprio motu*, or increase, unless the Assembly had already dealt with it.

Sir Hari Singh Gour.] Nobody can increase; even the Assembly cannot.

Sir Austen Chamberlain.] Please let the Witness answer.

Marquess of Salisbury.

8142. It could not reject or increase demands for expenditure unless they had already been dealt with by the Assembly at all. It could not reject the appropriations *en bloc*—I cannot call it the Appropriation Bill, but the appropriations *en bloc*. It could do nothing to restrict the extravagance of the Government of the day *proprio motu*. Is that so?—(Sir Samuel Hoare.) Yes, I think it is.

8143. So that when any member of the Committee, or member of the delegation, relies upon the Council of State to protect the financial stability of the Federation he is relying upon a broken reed?—Lord Salisbury is so very fond of adjectives and adverbs.

8144. They are necessary for language?—The more he uses them, the more I personally see an objection to them. I do not agree either with his adjectives or his adverbs in his last sentence.

Marquess of Salisbury.] I have not the same mastery of language which the Secretary of State has. I have to rely on the English language as I have been taught it.

Sir Austen Chamberlain.

8145. Put very simply, Secretary of State, is it a fact that the Council of State can only intervene to restore expenditure rejected by the Lower House, but not to reject expenditure voted by the Lower House?—Yes.

Sir Akbar Hydari.

8146. Is that expressly the position which has been taken up by the Indian States about the position of the two Houses being equal? Is that what is implied in the position which has been taken up by the Indian States that the powers of the two Houses should be equal, except only with regard to the initiation of a measure; according to what we had in mind the Council of State could really deal with a demand grant in any way it sees fit without reference to whether it had been passed wholly by



the Lower House or not?—It ought to be remembered that in the case contemplated in this discussion the Government and the Lower House are agreed. In the Government the States have got their representatives. If the Government and the Lower House are not agreed then the Government can bring the case into the Council of State.

*Sir Austen Chamberlain.*

8147. Is that so, Secretary of State, without qualification? No grant can be proposed in the Lower House except on the initiative of the Government?—Yes.

8148. Therefore the case could not arise of the Lower House voting more than the Government thought necessary?—No.

*Marquess of Salisbury.*] That is common to all Constitutions, of course.

*Lord Eustace Percy.*] No, not all.

*Sir Joseph Nall.*

8149. Is it not the fact that the Council of State cannot exercise any control over expenditure except in regard to such items as have been rejected or reduced by the Assembly, and, unless the Assembly moves to reject or reduce, the Council of State cannot exercise any control whatever over expenditure?—I think that is so under our proposals.

*Lord Peel.*

8150. Just one or two general questions before the exactly specific ones that I wanted to put. First of all, as regards the general distribution of taxation: Of the great heads of revenue, the land revenue, of course, falls to the Provinces, and the customs to the Federal Government?—Yes.

8151. But all the great debatable territory, I think, is the income tax, and I think I am right in saying that over that most of the controversy has raged?—Yes.

8152. I think several different proposals have been made for its distribution?—Yes.

8153. One was, I think, the opposite system to the one you suggest here, that the income tax should be assigned to the Provinces, and they should make contributions to the Centre?—Yes.

8154. I think that was rejected on the ground that it would be very difficult to

get money out of the Provinces when once they had got it in their hands?—Yes.

8155. And this arrangement in paragraph 139 is in the nature of a compromise to give the Federal Government good support for the first ten years of its existence, while the Provinces feel that they will get this income tax after that ten years have elapsed, and, presumably, will be happy in contemplation of their future success?—Yes, the proportion of the income tax contemplated in the White Paper.

8156. Just one question arising from Lord Salisbury's question about this question of assessments. I think Lord Salisbury suggested that there would be a great deal of contact between the Federal Government in matters of finance and the Provincial Governments. Is it not more true to say that these contacts would be between the Federal Government and individuals in the Provinces as regards assessment of companies and individuals?—Certainly.

8157. And that there would therefore be no chance of friction between the Governments concerned?—Yes, that is so.

8158. As regards his question about the money for reserved subjects, I think it was suggested there would be a constant friction which would go on between the Governor-General and the Ministers as to sweeping in the money for the reserved subjects, and those that were transferred?—Yes.

8159. But is it not true that there would probably be great pressure in the Assembly and the Council of State for expenditure on the reserved subjects, that is on Defence, and is it not also true that elected members are not always on the side of economy, but very often on the side of extravagance?—I think that is certainly so, judging by our experience here.

8160. I am much obliged for that statement. Now just one or two questions of the nature of detail although I think they are important detail. In paragraph 137, as regards salt, Federal Excises and Export Duties, the Federal Legislature has the power to distribute some portion, the whole or any part of the net Revenues from those particular sources. The question I am going to put is this:

Do you think it wise that the attention of the Provincial Governments should be specially directed to those particular sources of Revenue? If, for instance, the Federal Government is going to increase the rate of those taxes, will not that be almost an invitation to the Provinces to step in and say: "We want to have a share anyhow of that increase"—and if you are going to allow the Federal Government to make grants to the Provinces in certain cases, if their exchequers are overflowing (I do not think they often will be) is it not better to give it a general power out of the whole sources of taxation to give a grant to the Provinces rather than to allocate it to the product of any particular head of Revenue?—I am conscious of the kind of objection that Lord Peel has just urged. Would he, however, consider the other side of the question, the side of it that has prompted us to make the proposal of paragraph 137? We want, if we can, to get away from doles to Provinces. We made this proposal on the ground that in the case of salt, the actual consumption of salt in a Province was rather a good test for the amount of the tax to which it might think itself entitled. That is the reason why we made this proposal rather than a more general proposal on the dole lines.

*Sir Austen Chamberlain.*

8161. How would that work in the case of the Federal Government finding it necessary to raise extra Revenue and, therefore, to increase an Excise duty of which it had assigned a proportion to the Province? Suppose the salt tax is  $x$ , and half  $x$  has been assigned to the Province, the other half is insufficient for Federal purposes and they add to the rate and make the total rate  $x$  plus  $y$ , would half of  $y$ , the addition, automatically go to the Provinces?—We contemplate that the Federal Act under which an imposition of that kind is made would set down the conditions and that it will be free to the Federal Act to set out what percentage of grant it intended to make to the Province.

8162. Am I right in interpreting that as meaning that if half the original tax had been assigned, before Federal purposes it was necessary to increase the rate of the tax, the whole of the increase

might be reserved by the Federal Government?—It is so, and it would depend upon the Federal Act.

8163. You see the importance of it, Secretary of State? Otherwise, the Federal Government might have to impose double the charge it needs, because only half of the receipts would come to it?—Yes, certainly.

*Earl Peel.*

8164. May I follow up the Secretary of State's answer just a little further. Of course, I quite appreciate his point, if I may say so, but if you make a grant to the Provinces defined as a specific part of a particular tax, I should have thought it would be rather difficult to withdraw that grant in the future. It would be difficult to do it for an emergency and the tendency would be for a sort of convention to grow up that the Provinces had a right or claim to the particular percentage of those specified taxes?—I think there is something in what Lord Peel says. At the same time, I do think the other plan is the better plan, in view of the history of doles to the Provinces in India, and our desire to get away from it, if we can. I will take into account what Lord Peel has suggested. As at present advised, I am not convinced that his plan is a better one than ours.

8165. I will only ask one further question on it. I will not pursue it too far. If it is a question of a dole, and I suppose we cannot help calling it by that unpleasant name—a grant-in-aid, the Chairman suggests, I am bound to say I should have thought if the Central Government wishes to make a grant-in-aid, then, apparently, it can only do it from the proceeds of these specific taxes. As the amounts from those taxes are already allocated to Federal purposes, does it not really control, to some extent, the method by which taxation should be levied—that is to say, instead of allowing the Federal Government to raise this tax for a grant-in-aid anywhere it likes, it is more or less bound to do it from one of these particular taxes, while it might be extremely inconvenient to raise the tax at that particular moment?—I do not think there is anything in the White Paper that would prevent a lump grant being given to a Province, but it

is not the kind of grant that we are contemplating.

Marquess of Zetland.

8166. May I ask a supplementary question? I am not quite clear on this point: Will it be open to the Federal Government to vary from year to year the percentage of these particular taxes which it assigns to the Provinces, and, if so, will not that make it rather difficult for the Provincial Finance Ministers to draw up their budgets?—The Legislature would have the power to make a change, but I think Lord Zetland is attaching too much importance to this proposal really, for this reason: We are contemplating under this proposal a situation in which the Federal Government will have a good deal of money to give away. As we see things at present, it looks a rather distant contingency.

8167. I agree it does not look at the moment as if the Federal Government would have much money to give away, but that really is not an answer to my question. I understood you to say in reply to my question that the Legislature would have power to alter the percentage of these taxes to be assigned to the Provinces. Is it the Legislature or the Government?—I mean the Federal Government acting through the Federal Legislature.

Lord Eustace Percy.

8168. May I just interpose one question on this point? Is it not the fact that this paragraph 137 applies to practically all Federal taxes other than Income Tax, because the taxes to which it applies cover almost the whole field of Federal taxation, and was not one of the considerations in your mind this, that Federal taxes being all except Income Tax, taxes on consumption it might be desirable that the beneficial services, which are all Provincial services, should, to some extent, be financed out of taxes on consumption which are *ex hypothesi* paid by the individual poor consumer. Was not that in your mind, in the case of salt?—Yes, it was. Lord Eustace would, however, remember that Customs, the main source of Federal Revenue, does not come into this category at all.

Marquess of Reading.

8169. Secretary of State, is not the effect of this provision which we are discussing this: it is only an enabling power, is it not?—Yes.

8170. It is only intended to be an enabling clause?—Yes.

8171. It is not in any sense direct or mandatory; it is one of the means which they may use, and, therefore, it is open to the Federal Government to determine or not whether it will use this particular power.

Marquess of Zetland.] Except in the case of jute?

Marquess of Reading.

8172. That is an exception?—Yes, Lord Reading is quite right. This is an enabling provision.

Marquess of Reading.] It is not meant to be more than that, as I understand it.

Earl Peel.] But, of course, enabling provisions are sometimes extremely awkward to deal with. I have just one more point on that, and I will leave it. I am not dealing with jute, which, of course, is a special case.

Marquess of Zetland.] But it is referred to in that particular paragraph.

Earl Peel.

8173. It is. I only wanted to ask a question excluding it. I was not quite sure that I understood the Secretary of State's answer about salt that he gave, three or four questions ago. I think he suggested that it would be right that the Provinces should have some of the salt tax, because from several of the Provinces most of that source of income arose?—No, I did not say that; if I did, I expressed myself badly.

8174. I am sorry?—What I did say was, that with salt there was the rough and ready test of the consumption—not of the production—of the consumption of salt in a Province.

8175. But may I ask this further question: Is it not a fact that that distribution of the proceeds of that salt tax, whatever the proportion may be of the whole amount raised, will not be in proportion to the amount consumed in the Provinces, but will be probably on some

general plan in which population and wealth of the Provinces are factors?—I think that might well be so. The Federal Government will have to lay down the tests.

*Dr. Shafa' at Ahmad Khan.*

8176. May I just ask one question arising out of that? I suppose this will be done, if possible, after consultation with any inter-Provincial body that may be set up?—I should have thought, certainly, there would have to be discussion, say, with the Provincial Finance Ministers, or something of that kind. I would rather not be precise in defining the exact form of the consultation.

*Earl Peel.*

8177. Secretary of State, may I ask you then a question on the other side of the picture, for the moment—that is to say, there is a proposal called “Emergency Powers” which have been discussed, that is emergency powers on the Federation to levy a direct precept, as it were, in cases of difficulty, on the Provinces. I think apart from the temporary provisions about the Income Tax, you have included no such powers in the White Paper. Would not that be, in the case of an emergency at the Centre, a useful general power to have?—Lord Peel raises a difficult question upon which I know there are two schools of thought. One school of thought thinks that in the case of an emergency the Provinces should be called upon for the exceptional expenditure. The other school of thought takes the view that in the case of an emergency threatening the Federation that is to say, All-India, All-India should be liable for the expenditure. I have approached the question, I think, quite open-mindedly, prejudiced neither in the favour of the one course nor the other, but the reason that makes us make no provision for a Provincial constitution in a case of that kind is that we think that in a great emergency the Provinces would very likely not have the funds available, and that, if they did have the funds available, there might be more difficulty in getting the money to be spent. On that account, it is better to treat it as a Central emergency to be financed from the Centre. But, as I say, this is a question upon which many

different opinions have been expressed, and I should like to hear the views of the Committee and the Delegates upon it.

8178. Then I will not, perhaps, ask you further questions on the point at the moment, but I will reserve them for the discussion. There are several points, of course, that I could put upon that subject. Then, just passing, if I may, for a moment, to paragraph 138, that is as regards these long lists of taxes, death duties, and so on, which will be assigned to the Governor's Provinces, and the Legislature can lay down the basis of distribution and they can put a surcharge on. The first question I want to ask on that is this: I gather it is implied in that proposal that none of these taxes (I will take death duties as an example) could be imposed in any Provinces unless all the Provinces were to agree to do so. As I understand it, if seven of the Provinces out of nine wanted to have death duties, they would not be able to get them, unless the other two agreed. Is it not further the case that this power of surcharge of Federal taxes might be extremely useful to the Central Government, but could not come into operation until you had an agreement among all the nine Provinces to assent to death duty taxes?—(Sir *Malcolm Hailey.*) The proposal is, of course, Sir, that this shall be a tax Federally imposed for the benefit of the Provinces. Therefore, if it were found undesirable to apply that tax to one particular Province, we will say, in the case of death duties, then it would be possible for the Federal Legislature to pass a general Act applying to all Provinces, with the exception of that particular one.

8179. You could do that, could you, in spite of the fact that the basis of distribution amongst the Provinces has got to be laid down by the Legislature?—In passing its Act it would prescribe the distribution.

8180. Among the Provinces, I assume, which contributed, and not among the others?—Among the Provinces to which the Act applied.

8181. May I ask further: Supposing the Act applied to six out of nine Provinces, in that case would the Federal Government be able to raise a surcharge on those duties? Observe, of course,

that they fall specifically on those Provinces which themselves had agreed to have death duties?—Yes, the surcharge would obviously be limited in effect to those Provinces in which the Act was in force.

*Sir Austen Chamberlain.*

8182. Whether the Act is in force or not depends on the will of the Central Legislature, not on the Province?—That is so.

*Lord Peel.*

8183. Then it is quite clear, is it, that the Central Legislature can raise a surcharge on the product of the taxes of certain Provinces if it has chosen, with, I suppose, the agreement of those Provinces, to have those taxes raised in those Provinces?—I am not quite sure as to the exact amount of assent on the part of the Provinces to that taxation. It would be certainly taxation raised for the benefit of the Provinces, and therefore I assume that their assent would first be obtained.

*Lord Eustace Percy.*

8184. Is not the whole object of keeping these taxes Federal taxes that they should be uniform throughout India?—Yes, and I was merely assuming that local conditions might make it impossible to raise, shall we say, death duties, or something of that type, in one particular Province, but the object of making it Federal legislation is, as Lord Eustace Percy says, merely uniformity. They are entirely for the benefit of the Province, in the first instance, although ultimately the Federal Legislature may impose surcharge on it.

*Mr. N. M. Joshi.*

8185. May I ask why duties should be made uniform?—I think if you would look at the nature of the taxation you will see the desirability at least that death duties should be uniform, in effect; also taxes on mineral rights. Of course, terminal taxes must extend throughout India. That it would not be possible to exclude any particular area from, but that again has to be uniform in nature, and stamp duties, for the same reason, we have generally kept uniform hitherto. The uniformity

flows rather from the nature of the tax itself.

8186. I understand the tax on minerals and the other tax may stand, because they throw a burden on competitive industries, but death duties do not throw a burden on competitive industries?—I think it would be almost impossible to have varying death duties, because property would lie in several Provinces. It is very difficult to assess any death duties at different rates in different Provinces.

*Dr. Shafa'at Ahmad Khan.*

8187. Death duties are now a provincial subject, are they not?—There are no death duties at the moment. The Bombay Legislature proposed to levy death duties, but ultimately said they would prefer it should be Federal taxation for the reason I have given.

*Sir Phiroze Sethna.*

8188. To-day they are provincial?—They are not there.

*Lord Peel.*

8189. In these cases of the basis of distribution which is a very controversial matter, do you think it would be a good thing that in this, as in other cases, the basis of distribution, to avoid great discussion in the Legislature for the first five years, should be settled in the Act or not?—(Sir Samuel Hoare.) No, I do not think I do, for this reason; we have thought that to put all these details into the Act would very greatly overburden it and overburden the Schedules. It seemed to us on the whole wiser to leave it to the Federal Legislature when proposing such taxes to lay down in its own Act what was to be the method of distribution among the Provinces.

8189A. I think this is the last question I want to ask. It is a question about paragraphs 139 and 141. There is a power, of course, in the Governor-General, as has been stated in paragraph 139 to alter the amount of the tax retained for a certain number of years by the Federal Government. That means to say, of course, that the Provinces would be taxed because it would be money that they would have contributed. In paragraph 141, of course,

there are also apparently concurrent powers to place surcharges. If that policy is adopted of surcharges on Income Tax, rather than of the retention of more Income Tax, that, of course, would fall on the States as well as the Provinces. I am not quite clear whether it is intended that those two powers should be concurrent for the first 10 years, or that the second power of surcharge should come into operation at the end of the 10 years?—The surcharge would, of course, be for an emergency.

8190. Yes, but you would draw a distinction between an emergency in the first 10 years and the operations of the Governor-General in saying that he must retain more of the income tax for the Centre?—Yes.

8191. You draw a distinction between those two?—Yes. Shall I put my answer a little more clearly?

8192. Thank you?—An increase of the ordinary rates of income tax under paragraph 139 would affect Federal revenues in respect only of that share of the income tax which is permanently assigned to Federation. As regards the remaining part it would affect the Provinces, since the Federal share of that part is not the proceeds of the tax, but a lump sum. The proceeds of a Federal surcharge under Proposal 141 will go entirely to the Federation. That is the point to keep in mind.

8193. Yes?—And, further, subject to the special conditions explained under paragraph 141 the States would contribute. The proposals in paragraph 141 are, unlike those in paragraph 130, designed for special conditions of an emergency character.

8194. Of which the Governor-General would be the judge, I suppose, as to whether they were an emergency?—Yes, the Governor-General would be the judge of the emergency.

Lord Hardinge of Penshurst.

8195. My questions, Secretary of State, are based on your and Sir Malcolm Hailey's Memorandum of the 6th July?—Yes.

8196. In paragraph 8 it is there stated: "The principal item, Defence Services, stood at 56.23 crores net 10 years ago and the fall to 46.20 net is

due largely to retrenchment, though also (to the extent of about 1 crore) to the fall in commodity prices—a factor which may prove to be temporary. The present budget figure is regarded by the military authorities as barely satisfying the normal requirements of the Army at its present strength, for it has involved the depletion of stocks of supplies and the postponement of building and other programmes." What I would like to ask you, Secretary of State, is whether this reduction is due to a failure to replenish the reserve of stores of guns, rifles, shells, rifle ammunition, etc., which had been depleted during the last or previous year?—No. The reduction is not due to a failure to replenish reserves of guns, shells, rifles, ammunition, etc. These reserves have not been depleted during the past or previous years.

8197. I am very glad to hear that, because I recall that when I was in India I found at one moment the stores had been very seriously depleted, and it required a very great financial effort to replenish them?—I think it is immensely to the credit of the military authorities in India that they have made these great reductions without depleting the reserves to which Lord Hardinge has just drawn attention.

Lord Hardinge of Penshurst.] I entirely share that view. I now propose to put a question to the Secretary of State on the subject of Provincial finances and at the same time to make a suggestion. With the Committee's permission I will preface my suggestion by a few brief remarks on the subject of provincial self-government which I hope may not be regarded by the Committee as an unnecessary digression. I do not know whether everybody here is aware of the fact, but it was my Government who were the first protagonists of provincial autonomy. That was in a despatch written on the 25th August, 1911, in which, looking at the future, we wrote: "That the only possible solution of the political situation of the future would appear to be gradually to give the Provinces a larger measure of self-government until at last India would consist of a number of administrations autonomous in all provincial affairs with the Government of India above them all, and possessing power to interfere in case of mis-government, but ordinarily

restricting their functions to matters of Imperial concern." I still hold the views my Government had then, and I believe them now to be even more appropriate than they appeared to them to be then. I am anxious to see provincial autonomy on the widest and most generous scale introduced with the least possible delay subject to the condition already mentioned. Now I am going to say something on provincial finance before I put to the Secretary of State the question I have in mind. I read with great care Sir Malcolm Hailey's most able Memorandum on the financial implications of provincial autonomy and Federation, and I agree with the words used by Sir Purshotamdas Thakurdas on the 30th June, that the finances in India, both Central and Provincial, are in a critical condition. To me their precarious condition was a complete revelation. Further on in page 19 of Sir Malcolm Hailey's report—

Marquess of *Salisbury*.] Would my noble friend give us the paragraph because some of us have the other edition.

*Lord Hardinge of Penshurst.*

8198. Paragraph 37. It is some way down. Sir Malcolm Hailey says: "It may be felt necessary to examine the fundamental questions whether financial conditions are such as to affect any assumption we may make as to the date on which provincial autonomy can be introduced." That, indeed, was a wet blanket, but I do not regard that view as final. I fully recognise that the progress and development in India must come from the Provinces rather than from the Centre and, although the Centre must have adequate resources to meet the requirements of Debt Service, Defence, the restricted sphere of Central civil administration, and any additional demands due to unforeseen emergencies, it seems fairly certain that for some time to come the Centre will not have means available for distribution to the Provinces, an excise duty on matches which might yield 2½ crores being the sole new tax which might be taken into account as a reinforcement of Central revenues. As the Secretary of State said on 30th June it is important to emphasise the fact that, so far as we can see, for quite a number of years to come there is no orange to divide in India between the

Centre and the Provinces. He also added that for some years to come the Central Government would need substantially its present resources if the credit of India is to be maintained, and if its financial obligations are to be met. These are statements from the responsible Minister which cannot be ignored. As for Provincial revenues, the Federal Finance Committee concludes, as quoted by Sir Malcolm Hailey in paragraph 15: "Such provincial taxes as appear to be within the range of practical politics in the immediate future cannot be relied on to yield any substantial early additions to provincial revenues." If a country really desires to acquire a certain status for which its actual resources are insufficient it can only do so in either of two ways: by economy or additional taxation. I am not competent to express an opinion as to further economies, but I venture to say that there is an opening for increased taxation. Whether India is overtaxed or undertaxed I am unable to say. Some of those giving evidence here have said one thing and some another; but to me it is quite clear that if India wants provincial autonomy she has got to pay for it. Now I am told by competent authorities that in India the limit of taxation of the wealthier classes has been practically reached. I am going to suggest taxation which will affect all classes and not one particular class. The salt tax is now, I understand, one rupee seven annas per maund inclusive of a temporary surcharge of five annas which represents an annual tax of 3½ annas equivalent to 4d. in our money per head of the population. Why not increase it by a rupee and give it to the Provinces? That is my proposal. This would mean about 2d. more per head of the population. The salt tax has been higher in the past, and when India was less prosperous than it is now. I am told that in Lord Curzon's time it was even three rupees. What is the objection? If, as we have been told here, the Indian masses desire self-government, they can have it at a price, and that not a high one. I would like to hear the views of the Secretary of State upon this question?—Sir Austen, I am sure we are much obliged to Lord Hardinge for giving us his views in the way that he has, from the experience that fully entitles him to make the kind of sug-

gestions that he has just made. There were two observations that he made with which I do not find myself in entire agreement, and, perhaps, I had better safeguard my answer to his more direct questions, by stating them at once. I would not go so far as he has gone in stating that the finances of India are in a precarious condition. I would, therefore point to what I said the other day, particularly to what I said about Indian credit at the end of my speech, but I do not pause to argue a big issue of that kind now. Nor also do I entirely agree with him when he says that if more resources are to be found for starting either Provincial Autonomy or the Federal Government, the only two alternatives are economy or further taxation. I should have been inclined to think that there was the third alternative, namely, of existing taxes bringing in much more Revenue than they are bringing in at the present time. A little turn in the wheel of prosperity, would, I believe, greatly increase the proceeds of the taxes, both Central and Provincial. If Lord Hardinge would like a more expert view on that point, I am sure Sir Malcolm Hailey could amplify what I have just said, from his own experience in the United Provinces. I come now to Lord Hardinge's question about an increase of the salt tax. What he says is quite true, that at one time the salt tax was higher than it is now. It should, however, also be remembered that there is a good deal of political history behind the salt tax, and the salt tax has, rightly or wrongly, occasioned a good deal of political controversy and political agitation in India. One has got to take that kind of background into account. When he asks me the specific question why we should not propose an increase in that tax in order to get Provincial Autonomy started at an earlier date, I would prefer not to give him a definite answer, if he will forgive me. Any answer that I may give might either exclude the possibility of an increase in a particular form of taxation or it might be understood to mean that not only was I in favour of it, but that such a tax was going to be introduced into one of the ensuing Indian Budgets, and in India, as everywhere else, one cannot forestall a Budget statement. What I will say is, that I will take into account

the suggestion that he has made, and, indeed, it is the kind of suggestion that I think must be considered by the Committee and the Delegates, as a whole, namely, whether if the financial situation is such as to make it likely under present conditions that the institution of Provincial Autonomy might be delayed, whether in that case there may not be expedients such as that which he has suggested and such as others that I might also be able to suggest that might expedite the date of the operation of Provincial Autonomy. I hope, therefore, that without any discourtesy to Lord Hardinge or without any appearance of ignoring the importance of the suggestion that he has made, he will allow me to leave the position as I have stated it.

Lord *Hardinge of Penshurst*.] Thank you very much. I am very grateful for that reply, and, of course, I do not want to cause any trouble by pressing it in any way.

Sir *Mirza M. Ismail*.

8199. I would like to ask the Secretary of State a few questions on a matter of considerable importance to a good many States. Would the Secretary of State kindly refer to paragraph 61 of the Introduction to the White Paper dealing with the question of Tributes? May I take it that the Secretary of State accepts the general principle laid down in the following terms by the Federal Finance Sub-Committee of 1931, of which Lord Peel was Chairman—paragraph 18, in which they state: "We think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution, and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition." The Secretary of State is aware that the Davidson Committee in 1922 endorsed this principle. They said in paragraph 65: "We are in full agreement with the conclusions of the Federal Finance Sub-Committee that there is no place for them (that is Tributes) in a Federal Constitution, and that, with Federation, they should be brought to an end." The same principle was affirmed once again by the Federal Finance Committee of 1932, of which Lord



Peel was again Chairman, in the following words—paragraph 26 : “ We are strongly of opinion that the present cash contributions of unequal incidence, paid by certain States, contravene the fundamental principle that contributions to Federal Revenues should be on a uniform and equitable basis ; and we endorse the view of the Davidson Committee that there is no permanent place for such exceptional and unequal contributions in a system of Federal Finance.” Would the Secretary of State agree with the view that a practice so wholly at variance with principle deserves immediate termination ?—Mr. Chairman, Sir Mirza Ismail has been a consistent and a most effective advocate of the abolition of these tributes. So effective and persuasive has he been that I think we have all of us almost unanimously agreed with him from the very start that he made upon this question two or three years ago. I should very much have liked to have been able to move in the direction of extinguishing these tributes. The trouble has been nothing more than the financial situation ; there has been no money available ; and we have not been able to take a step that we definitely wished to take in the direction of extinguishing altogether tributes that we think should form no place in Federal Finance. His Majesty’s Government accept the recommendation in paragraph 90 of the Davidson Report that with the advent of Federation, the cash contributions should be gradually wiped out over a period of years.

8200. I will refer to that point a little later, but may I proceed a little further ? May I invite the Secretary of State’s attention to the following passage in the Report of the Federal Finance Sub-Committee again, of 1931, paragraph 18 : “ There seems to us to be certain cases in which real hardship is inflicted by the relative magnitude of the burden of the cash contributions, and we suggest that it might be possible without excessive loss being thrown on the Federal Government, to remit at once that part of any contribution which is in excess of 5 per cent. of the total Revenues of the State.” Is the Secretary of State aware that a similar recommendation was made by the Davidson Committee also, in the following terms—paragraph

88 : “ We have no hesitation in supporting the proposal of the Sub-Committee that the sum by which any contribution is in excess of 5 per cent. of the total Revenues of the States should be at once remitted. Our recommendations in general assume and are based upon the accomplishment of Federation, but we believe that the intention was that we should be at liberty to advise if we found it desirable that this step should be taken without delay. The inequality of the payments is so marked and, in some cases, their burden so heavy, rising in one case to as much as 40 per cent. of the Revenues of the State, that we hold that the relief should be immediate.” Is the Secretary of State aware that the Government of India have definitely refused to afford even this small measure of immediate relief to the States concerned ?—My previous answer covers this question as well. The answer is that we should very much have liked to have been in a position to make this remission, but in the abnormal times in which we are living, there has not been the money available, and that is the sole reason why with many demands upon the Central Budget and in face of the very abnormal times in which we are living, we have not been able to carry out this recommendation.

8201. I will refer to that point again a little later. Is not the amount involved approximately 12 lakhs or £93,000 a year, according to the Davidson Committee ?—Yes. The amount remissible under the 5 per cent. arrangement is calculated to be 11½ lakhs, subject to verification of the Revenue figures of individual States.

8202. Is the Secretary of State aware that the Government of India have stated in so many words that it will be impossible to them to take any action in pursuance of the Committee’s recommendation, until they are in a position : (1) to remove emergency surcharges ; (2) to restore full pay to their employees ; and (3) to settle satisfactorily the question of special assistance to the deficit Provinces ?—I should not like to go into the conditions in a precise form. I think it is sufficient to say that we want to make this remission, but as things are now, there is not the money to make it, and

we are anxious to make it, as soon as we can.

8203. It is not possible for the Secretary of State to say when he will be able to do so?—With the best will in the world, it is not.

8204. Does not this attitude amount to an indefinite postponement of the relief so strongly recommended by the Special Committee and the Round Table Conference?—The fault is not ours; the fault is the world in which we are living. If the world was a reasonable world, we could make much more precise prophecies about the future. What I can say to Sir Mirza once again is, that I wish to see this remission made, and the sooner it can be made, the better pleased I shall be.

*Sir Austen Chamberlain.*

8205. These contributions, I suppose, come under the heading of paramountcy?—They come under the heading of the tributes dealt with in Mr. Davidson's Report, raising the question of whether there should be tributes continuing under a Federal Government or whether they should be eliminated and, if so, how?

8206. What I want to get clear in my own mind is this, Secretary of State: Suppose that adverse conditions prevent you from carrying out the policy which you desire to do before Federation comes into existence, who will then be the authority to decide when it is possible to remit these tributes—whether they shall be remitted?—The Crown.

*Sir Mirza M. Ismail.*

8207. The Secretary of State referred to the present financial difficulty of the Government of India. May I suggest that the Government of India are not the only sufferers? That these difficulties are not peculiar to them, and that other Governments, too, are faced with similar difficulties. Does he not think that it is quite possible that in the case of some of the States, at any rate, their difficulties may be due mainly to this annual drain on their comparatively slender resources?—I should have thought that anyhow, in most cases, that was not so; but, even if I am wrong and even if it were so, I am afraid it

could not alter my answer, namely, that if there is not any money there, we cannot make the remission.

8208. Is it not a fact that the total amount received by the Government of India in the shape of tributes is approximately 74 lakhs of rupees, or £560,000 annually? How much of this amount would rank for effective remission, if, as stated in the White Paper, following the recommendation of the Davidson Committee "it is not intended to remit contributions, save in so far as they are in excess of an existing immunity." In other words, what would be the net amount involved if the tributes were abolished, subject to the proposed adjustments as regards immunities?—My estimate is 50 lakhs.

8209. According to the calculations which I have made, this might not be more than 30 lakhs or £225,000. In calculating this sum, I have assumed that effect would have been given, prior to and independently of the proposed Federation, to the recommendations of both the Federal Finance Sub-Committee of 1931 and the Davidson Committee, that "immediate relief should be given by the remission of the amount of any contribution which is in excess of the total Revenues of the State which pays it"?—I am afraid whether the figure is 30 or 50 lakhs, my answer is just the same: We have not got the money for it.

8210. Is it suggested that the remission of 30 lakhs, as I assume it, or less than .4 per cent. of the total annual Revenue, would cause an appreciable strain on the resources of the Government of India?—Yes.

*Sir Austen Chamberlain.*] Sir Mirza, you remember the Secretary of State estimated the amount at 50 lakhs.

*Sir Mirza M. Ismail.*] I estimated it at 30 lakhs.

*Sir Austen Chamberlain.*] Yes; there is a difference of opinion between you.

*Witness.*] Whether it is 30 or 50, my answer to Sir Mirza would be, yes.

*Mr. Zafrulla Khan.*] Has not Sir Mirza in his figures excluded from his calculations any tribute which is in excess of 5 per cent. of the total Revenue of the States?

Sir *Mirza M. Ismail.*] Yes.

Mr. *Zafrulla Khan.*] If you included that, your figures would be much nearer the figures of the Secretary of State ?

Sir *Mirza M. Ismail.*] They might be the same.

Mr. *Zafrulla Khan.*] So really, there is no difference in the figures at all. You exclude a figure in order to get the total down ?

Sir *Mirza M. Ismail.*] I exclude the figure because it was recommended by the Committee.

Mr. *Zafrulla Khan.*] You assume 30 lakhs will already have been paid, and wherever you start you will have 50 lakhs total remission at the end ?—And whenever you start, we have not got the money at present.

Sir *Austen Chamberlain.*] I do not think we can get much beyond that.

Sir *Mirza M. Ismail.*

8211. Will I be right in saying that some 150 States would benefit in varying measure by the remission of the tributes ?—My information is that the number is 62.

8212. Is the Secretary of State aware that some of these States are financially in a more difficult position than the Government of India or some of the Provinces, in that they have had recurring deficits, possess a smaller margin for additional taxation, and have been unable to restore the cuts in the salaries of their servants, unlike the Government of India and the Provinces which have restored them, at least partially ?—I could not say whether that is so, or not ; I have not the information here. What I can say is that if Sir Mirza will take the case of the State that he represents so well, the State of Mysore, there we did make a very important remission to Mysore by reducing the tribute fixed by treaty at 35 lakhs, and in 1927 we reduced that figure to 24½ lakhs. That shows our goodwill, anyhow.

Sir *Mirza M. Ismail.*] I would not like to say anything on that particular point. If I am asked to say anything I would say this, that the Government of India, after all, would not be conferring a favour ; they would be only undoing what

we regard as a wrong. It is not a question of conferring a favour.

Sir *Austen Chamberlain.*] Gratitude is rare in this world, Sir Mirza.

Sir *Mirza M. Ismail.*

8213. May I invite the Secretary of State's attention to the following passage in Sir Malcolm Hailey's Memorandum on the financial implications of Provincial autonomy and Federation in which he says : "There is no uniform system of 'tribute.' The list of contributing States is a long one, but the sums paid are of very unequal amount, one State (Mysore) paying as much as one-third of the whole, while many States, including some of the most important, pay no contribution at all." Is the Secretary of State aware that successive administrations in Mysore have made representations to the Government of India for the moderation or the abolition of the tribute, pointing out that it constitutes a terrible drain on the resources of the State, and that in one form or another the question has been coming up before the Government of India for nearly a century ?—I expect that is the state of affairs and no doubt it was owing to that that in 1927 the Government made such a big reduction in the tribute.

8214. Lastly, may I ask if the Secretary of State is aware that Mysore attaches the greatest possible importance to a satisfactory settlement of this question ?—I am sure that is so, and I hope Sir Mirza will believe me when I say that I attach the greatest possible importance to a settlement of the question, also.

Mr. *Y. Thombare.*

8215. Secretary of State, I quite recognise that it is a formidable difficulty in the way of remitting the tributes due from the States, that there is not enough money for it at present, but there will not perhaps be the same difficulty involved in the cases of the smaller States which have such amounts as Rs. 500, Rs. 200, and Rs. 300 to pay. Therefore, will you be pleased to consider their cases ?—I am afraid I must harden my heart against the appeal of the smaller States. Indeed, if I did yield to it I feel that the bigger States would be on my back in a moment. I think there is

a little confusion in the minds of some members of the Committee about these tributes. We do not regard these tributes as immoral or wicked or unjustifiable. We regard them simply as an unsuitable form of Federal tax.

8216. That is right?—And I am afraid my answer to Mr. Thombare must be that there is not the money to do it now, either for the big, the medium, or the small States.

8217. Just one more question. You have already answered these questions about cash contributions. There are States which have ceded territories, and their case is referred to in paragraph 61 of the Introduction to the White Paper. Will that case receive consideration on the basis of the net revenue at the time of the session as it has been stated in the White Paper?—If it has been stated in the White Paper, certainly, so far as we are concerned.

8218. Coming to the question of the cost of the Legislature, what would be the recurring and non-recurring cost of the Legislatures which have been proposed in the White Paper—the Central Federal Legislatures?—The difference in the cost?

Mr. Y. Thombare.] The difference between the cost which has been proposed and the cost that would be incurred provided they were enlarged beyond the numbers proposed in the White Paper. Supposing the numbers were for the Upper House 300 and for the Lower House 450, what would be the additional cost involved?

Sir Akbar Hydari.

8219. What would be the total cost? (Mr. Y. Thombare.) The additional cost?—The annual cost of the Federal Legislature under the White Paper proposals is estimated at 39 lakhs over the present Central Legislature. Of this sum the Lower House accounts for 24 lakhs and the Upper House for 15. If the strength of the two Houses were further increased to the figures mentioned, the further extra cost would be something like 8 lakhs a year, although this figure is a rather rough estimate.

Sir Akbar Hydari.

8220. Am I to understand that 39 lakhs is the additional cost if the

Federal Legislature is increased from 60 in the Upper House and 145 in the Lower House to 260 in the Upper House and 375 in the Lower?—Yes.

Sir N. N. Sircar.

8221. May I draw the attention of the Secretary of State to Proposal 68 which refers to Ministers' salaries, on page 55 of the book given to us?—Yes.

8222. Has the Secretary of State applied his mind to the amount of the salary which he would advise being fixed for the Ministers?—Does Sir Nripendra suggest we should put the figure in the Constitution Act?

8223. No, I am not concerned with the method by which it should be done, but I am applying my mind rather to the quantum—the amount which should be paid to the Minister?—I cannot say that I have a precise figure in my mind. I would, however, impress upon the minds of the Committee and of the Delegates that in the present state of Indian finances there is no scope for very high salaries.

8224. Having regard to your last answer, may I ask you to consider this, that, as a matter of fact, the feeling is very general that the salaries now enjoyed by the Ministers are out of all proportion to the resources of our Province, and whenever there has been any opposition to the reduction of salary, while everyone has agreed that the salary has been too high, it has been opposed by some on the ground that it will not do to have different salaries for the member of the Council and for the Minister. Would the Secretary of State be good enough to bear these facts in mind and to make such inquiries as he thinks fit?—I will certainly bear these facts in mind and I would like to receive the views of representative Indians upon the question. Offhand, it does not seem apparent to me why there should be complete uniformity in the matter of this kind. Here in England there is great diversity in actual practice.

Mr. Zafzulla Khan.] Is it not a fact in practice that in some cases the salary of the Minister has been reduced much below the figure of the Executive Counsellors? In practice that has been done.

Sir N. N. Sircar.

8225. Yes ?—Yes, I think that is so.  
Sir N. N. Sircar.] That has been done in Bihar and Orissa.

Sir Hari Singh Gour.] Also in the Central Provinces.

Sir N. N. Sircar.

8226. I propose to ask some questions with reference to No. 137, the proposal which relates to the export duty on jute. I believe the Secretary of State remembers the evidence which has been given on this point by Sir Edward Benthall, amongst others. I am asking him, does he agree with his view, that this tax, having regard to the facts of the case, has the same incidence as Land Revenue ?—The Government of Bengal has always claimed that the jute export duty belongs to Bengal. I am not aware that the Government of India have ever committed themselves to the suggested principle. They are, nevertheless, as I am, fully aware of the special difficulties of Bengal which make it imperative to give some relief. As Sir Nripendra will see under the White Paper proposals at least half the jute export taxes must be assigned to Bengal, or, more strictly speaking, to the producing units, leaving a power to the Federal Legislature to assign a greater share. I do not myself think that it would be profitable to enter upon an economic discussion as to the nature of a jute export duty and its similarity to or differences from Land Revenue.

8227. If I may say so with great respect to you, I likewise agree. I only want to bring out one fact so that you may be pleased to consider it. So far as the economics are concerned (I mean in the economic sphere) is it not a fact that Bengal, as compared to other Provinces, may be described as a consumers' Province ? What I mean is this : The taxes which have been levied are on salt, wheat, iron, steel, cotton piece goods, and

(After a short adjournment.)

Sir Austen Chamberlain.] Sir Hari Singh Gour, you and Sir Phiroze Sethna, I understand, handed in a joint list of questions to the Secretary of State. Are you prepared to proceed with them ?

so on, and that really means profit to the other Provinces that Bengal has got to pay. Is not that the general situation ? At any rate, I find that is the view as expressed by the Government of Bengal ?—I do not think I should dissent from it.

Sir A. P. Patro.] Is not it a fact that Bengal is, on account of the permanent settlement, not able to make up the necessary revenue ?

Sir N. N. Sircar.] I have no objection to the question, but it only proves that Sir P. Patro, as other non-Bengalis are, is in a state of hopeless confusion over the permanent settlement.

Mr. Zafrulla Khan.] Do I understand Bengal is suffering from the permanent settlement ?

Sir N. N. Sircar.] Yes.

Mr. Zafrulla Khan.] Why not do away with it ?

Sir N. N. Sircar.] May I ask some questions on that ?

Witness.] May I ask for the authority of the Committee to publish the Memoranda which I have already circulated, namely, the Memoranda on the Courts, the Instruments of Instruction, the Railway Board, and also a note which I suggest circulating to the Committee upon the cost of the Legislature ? I understand there is no authority under which those reports can actually be published ?

Sir Austen Chamberlain.

8228. You mean you want them handed in and made part of our published proceedings ?—Made part of the proceedings. They are part of my evidence.

Marquess of Salisbury.

8229. They will be laid before Parliament ?—Yes, just in the same way as my other Memoranda have been.

Sir Austen Chamberlain.] I assume the Committee agrees. (Agreed.)

Sir N. N. Sircar.] I have no further questions to ask.

Sir Hari Singh Gour.] Yes.

Witness.] Sir Austen, I wanted to make a note about these questions ; I will just find the note I have got about

them. They are a series of very detailed questions about the minutiae of the present Indian Budget, and the present items that are included in the Defence field in India. As far as I can see, almost all of them involve tables of figures, and I would have thought that almost all of them should much more suitably be asked either in the Indian Assembly or in administrative debates in the House of Commons. I think the Committee will see at once that if we start upon these questions, they will get involved in every kind of minute detail of the Army administration under the present regime. How that is going to help us in the broader issues of the Constitutional problem, I myself cannot see.

*Sir Hari Singh Gour.*] May I be permitted to explain ?

*Sir Austen Chamberlain.*] Yes.

*Sir Hari Singh Gour.*] The object of the questions was not to get into the minutiae of the Civil and Military expenditure of India, but the object was to guide the Secretary of State in his search for economy, and to point out to him the avenues for retrenchment, both in the Civil and Military expenditure. The Secretary of State has rightly observed that these are questions more appropriate for discussion in the Legislative Assembly. Speaking for myself, these questions have been discussed time and again in the Legislative Assembly ever since its commencement in 1921, but the reason why we wish to draw the attention of the Joint Select Committee to the cumulative effect of these questions is that a great deal of economy is possible and should be the subject of early exploration on the part of the Secretary of State, which would balance the Budget and place the Provinces upon an even keel ; and it is only looking at that broad aspect of the question, that we gave notice of these detailed questions. It is not intended to draw the Secretary of State out upon each and every detail of the questions, but, generally, to assist him and to guide him in his search for economy.

*Witness.*] I would still have thought that that really was much more a series of administrative questions. I have got answers prepared for me here to a num-

ber of Sir Hari Singh Gour's questions ; there are pages of them ; most of them tables of figures. That being so, I would have thought it was much better, if Sir Hari Singh Gour thinks that it is a suitable occasion in this Committee to raise all these administrative questions, that I should hand in the questions which Sir Hari Singh Gour sent to me together with my answers to them.

*Sir Hari Singh Gour.*

8230. I am quite prepared to circulate my questions, as the Secretary of State is good enough to say that he will circulate his answers ?—I think that will be the better course. The questions and answers are as follows :

*Finance : Sir H. S. Gour and Sir P. Sethna.*

8231. What is the total expenditure on Army, Navy, Air Force and allied expenditure, such as loss on strategic railways, expenditure on Frontier Constabulary and armed police, Assam Rifles, Khasedars and other expenditure classed as political but intimately connected with Defence, such as the upkeep of the Rajmak and other Military roads ?—The Budget estimates for 1933-34 give the following net figures :—Army, 43 crores 84 lakhs 30,000 rupees ; Royal Air Force, 1 crore 58 lakhs 69,000 rupees ; Royal Indian Marine, 77 lakhs 1,000 rupees ; total, 46 crores 20 lakhs. As regards the other classes of expenditure to which this question refers, we have had occasion in connection with the Disarmament Conference to compile and publish a number of figures relating to Defence expenditure in the wider sense. These include all the various items which the expert bodies of the Conference have pronounced to be proper subjects for inclusion in a review of Defence expenditure ; and I cannot do better than base my reply on them. The figures I am going to quote relate to the financial year 1929-30, which was the year taken by the Conference for working purposes ; but annual returns will be rendered in future on the same basis. Under the general heading of Frontier Watch and Ward, including maintenance of various irregular corps, the cost is shown as about 2½ crores. The cost of the Eastern

Frontier Rifles was about 4½ lakhs. The estimated cost in respect of strategic railways was about 50 lakhs.

8232. What is Defence Expenditure on wireless ?

*Wireless.*

No separate charge under this Head appears in the Defence Estimates ; nor is there anything in the Posts and Telegraph Estimates to show how much, if any, of the total charges under the heading "Radio" are incurred on the part of the Defence authorities.

8233. What is the cost of Railway and Customs concessions granted to Military Officers ?

*Railway Concessions.*

No estimate can be made of the cost, if any, of the preferential rates given by the Railways to military personnel. A non-official witness before the Railway Retrenchment Committee estimated the loss to Railway Revenue on military account at a crore a year, including goods as well as passenger traffic. The Committee, however, reported that they had "not been able to verify this statement."

*Customs.*

The only concession granted to military officers is the free import of certain articles "which they are required to maintain for the due performance of their military duties," e.g., uniforms and rifles and saddlery of regulation military pattern. The cost would probably be negligible.

8234. What is the expenditure on Hill allowances military Schools, Ecclesiastical Establishments and Hospitals ?—No information is available regarding *Hill Allowances* as such. Under the Heading "Hill Sanitoria and Depots" is an entry of rupees 1,35,180.

*Military Schools.*

This is presumed to refer not to the technical training schools such as the School of Artillery, etc., but to non-technical educational institutions. The figures are as follows :—

	Rs.
Garrison, regimental, and Detachment Schools for British Troops .. .. .	9,67,410

L106RO

	Rs.
Garrison, regimental, and Detachment Schools for Indian Troops .. .. .	1,09,000
Army Schools of Education, Belgaum .. .. .	1,83,170
Lawrence Royal Military Schools	3,98,750
Prince of Wales' Royal Indian Military College, Dehra Dun	2,15,300
Kitchener College, Nowgong .. .	60,340
King George's Royal Indian Military Schools (3) .. .	2,49,660
Indian Military Academy, Dehra Dun .. .. .	4,85,890

*Ecclesiastical.*

Expenditure on Ecclesiastical Establishments other than the Church of England, amounts to Rs. 4,86,000. The Church of England expenditure is charged to a Civil Head and no accurate estimate is possible of the proportion that should be debited to the Army. A rough estimate is Rs. 14,00,000.

*Hospitals.*

The full cost, including the pay of officers and men of the Medical Services, is Rs. 1,30,13,000.

8235. To what extent effect has been given to the additional cost entailed by giving effect to the Esher Committee's recommendation on the Indian Army, and its relation to the immediate Defence of India ?—The *Esher Committee*, apart from its recommendations on constitutional relations, made a large number of detailed proposals for bettering the conditions of service in the Indian Army. Many of these, which were recognised at the time by Indian public opinion to be required, were given effect ; but many further changes have since been introduced and it is not possible at this date to give any estimate of the additional cost of carrying out the Esher proposals.

8236. The cost of the Army year by year from 1910-1933, and the reasons for such additional cost ?—"I attach the figures of net military expenditure in India since 1910. They show a slight rise from 28 to 29 crores in the four years just before the War. There was, of course, a very large increase from 29 to 68 crores just after the War. The figure of 68 crores for 1921-22 was abnormal, as heavy charges were being

met for the operations in Waziristan and for post-War demobilisation. The figure of 63 crores for the following year represents a more normal average for that particular period. The increase to this figure was partly due of course to the rise in prices, but partly also to the thorough reorganisation of the Army in India that was then found necessary. It will be worth while to remind the Committee that before the War the Army was little more than a series of formations comprising a large number of individual Cavalry and infantry units with a small proportion of Artillery, Engineers and Pioneers. There were practically no ancillary services. Moreover, the men of the Indian Army horsed themselves, fed themselves, and contributed towards their own housing. Units were responsible for clothing the men. The administrative services obtained their personnel from the fighting units. The Indian Army is now horsed, clothed, fed and housed by the State; and three entirely new services have been introduced, viz., the Royal Air Force, the Signal Service and the Mechanical Transport Service. The figures show a progressive decrease on the whole from 1921 to 1931, and a much sharper decrease in 1932 due to the retrenchment campaign."

*Net Military Expenditure to nearest half crore.*

1910-11	..	..	28
1911-12	..	..	28.5
1912-13	..	..	28.5
1913-14	..	..	29
1921-22	..	..	68
1922-23	..	..	63.5
1923-24	..	..	55
1924-25	..	..	55.5
1925-26	..	..	56
1926-27	..	..	56
1927-28	..	..	54.5
1928-29	..	..	55
1929-30	..	..	55
1930-31	..	..	54.30
1931-32	..	..	51.76
1932-33	..	..	46.75
			(Revised Estimate).
1933-34	..	..	46.20
			(Budget Estimate).

8237. The saving effected if the pay of the All-India Services henceforth re-

cruted is fixed on the Indian basis and all future recruits receive the pay so revised?—The only All-India Services at present recruited for are the Indian Civil Service and Indian Police. Assuming that by Indian basis of pay is meant basic rates of present rupee pay for the services, i.e., omitting overseas pay, the saving\* to be effected by ceasing to pay new entrants of non-Asiatic domicile from 1934 onwards overseas pay will rise from an immediate saving from 1934-5 (five months only from date of appointment) of £1,688 in the case of the Indian Civil Service and £450 in the case of the Police, to a saving in 1940 of about £33,000 and £10,000 respectively and, assuming the average number of premature retirements remains the same, to a maximum saving of £66,000 on the Indian Civil Service in 1951 and £25,000 on the Police in 1954. So long as recruitment may continue beyond 1940 at existing rates, this\* maximum saving would continue to be realised.

8238. The Index of prices at the time of the Lee Concession and the Index of prices now prevailing?—*Cost of Living.*—The working class cost of living figure for Bombay City† at the required dates was as follows:—

July, 1914	..	..	100
April, 1924	..	..	150
May, 1933	..	..	100
			(Latest Available).

\*Any estimate obviously depends upon the number of recruits taken and the period of continuance of recruitment—both uncertain factors. In the figures given, the assumption is made that recruitment for both these Services will continue until 1940 at any rate and that the annual intake of recruits of non-Asiatic domicile will on the average remain unaltered for this period, viz., 30 for the Indian Civil Service and 12 for the Police.

†This index figure is on the whole the most satisfactory figure maintained in India, but it is unaffected by variations in the cost of imported stores, and, as stated in reply to a question asked in the House of Commons on 13th February last, certainly cannot be applied without qualification to the case of members of the Superior Services serving in Bombay or elsewhere.



8259. The total saving likely to be effected by the abolition of the post of the Divisional Commissioners in all the Provinces in which they exist?—There are 44 Divisional Commissioners costing approximately £127,000 per annum. Their office establishments may be assumed to cost a further £20,000 per annum. Abolition might take place in one of two ways. Commissionerships might be abolished as incumbents of these posts retired in the ordinary course when a saving of approximately £147,000 per annum would be worked up to gradually; or all Commissionerships might be abolished at once when against the saving of £147,000 per annum would have to be set for a period the extra cost of the pensions of officers prematurely retired. If immediate abolition were decided upon, it may be assumed that all officers would have earned their full annuity of £1,000 per annum and further that the period by which retirement had been anticipated would be on the average five years. If all Commissionerships were abolished at once the saving, therefore, of £147,000 per annum would, for a period of five years or so, be offset by an increased pension charge of £44,000 a year for the Commissioners and of some increased pension charge (the amount of which cannot be estimated but would not be large) for members of their office establishments assuming that these could not be absorbed elsewhere. The probability that compensation would have to be given to members of the Indian Civil Service for the loss of prospects occasioned by the abolition of these posts must also be taken into account. The amount of compensation might, perhaps, be estimated at an allowance of Rs. 500 per mensem in respect of each post abolished and it may be assumed that these 44 allowances of Rs. 500 per mensem would continue to be paid over a period of some 25 years, *i.e.*, until the latest-joined recruit prior to the date of abolition had served his time. Against this increased expenditure of approximately £20,000 per annum for 25 years must, however, be set a reduction of the recruitment rate and this would from the outset be a material offset against the cost of the allowances and should in time more than absorb the whole of their cost. But it must not be forgotten that an alternative

agency would have to be provided for hearing revenue appeals and the like and that the cost of this would be appreciable though I have not been able to reduce it to figures.

8240. Is it not a fact that these Commissioners were appointed to discharge the threefold duties of Civil, Criminal and Revenue Administration and that long since they have ceased to exercise Civil and Criminal jurisdiction?—Yes, Commissioners have been relieved of judicial work both civil and criminal. But this alteration took place in the Regulation Provinces many years ago and at a later date in the non-Regulation Provinces. The fact, however, has no relation to the present scale of duties falling on Commissioners.

8241. The posts, the abolition of which were recommended by the Inchcape Committee and which have not been abolished, or which if abolished have since been restored?—A statement showing the action taken on the recommendations of the Inchcape Committee may be inspected at this Office if desired (no spare copy is available); a copy was also placed in the Library of the House of Commons. Many general recommendations involving reductions in staff were made which cannot be set out in manageable compass in a note. But the purpose of the present inquiry is presumably to ascertain what has happened in regard to important individual posts only, and I have had a list prepared of those about which information is available.

*Posts recommended for abolition and  
Action taken.*

1. Deputy Secretary, Legislative Department—Held in abeyance except during periods of pressure during Session.
- Inspector-General of Irrigation—Duties to be performed by Consulting Engineer (since abolished).
- Information Officer, India Office—Not abolished.
- Educational Commissioner—Not abolished but economies effected.
- Political Agent to Inspector-General, Police, N. W. F. P.—Not abolished.
- Inspector-General, Police, Ajmer—Not abolished but economies effected.
- Public Health Commissioner—Not abolished but economies effected.

Director Medical Research—Kept in abeyance, since filled.

Managing Director, Opium Factory, Ghazipur—Not abolished.

8242. The total amount of the Capitation Charges paid by India since 1905. Is it a fact that the refund if any, will only take effect from 1927 or thereabouts?—The total amount of capitation payments made since 1905 is approximately £34,170,000, including about £1,032,000 paid to the Air Ministry since 1920. "The questions arising out of the Tribunal's award, including that of retrospective adjustment, are still under consideration."

Sir *Hari Singh Gour*.] I shall supplement those questions by a few questions of a more general character.

Sir *Austen Chamberlain*.] Before you begin, Sir Hari, may I say that I do not think the Committee and the delegates, sitting as we are sitting to-day, could usefully examine details of economies. I hope your questions will be directed to general issues such as the Committee may really be expected to appreciate, and such as may be expected to influence their judgment upon the proposals laid before them.

Sir *Hari Singh Gour*.

8243. That is exactly the sort of question that I was going to put. I draw the attention of the Secretary of State to the Report of the Sub-Committee of the First Round Table Conference, Sub-Committee, No. 7, Defence, pages 62 and 63. In paragraph 3, at page 62, the Committee record the following decision: "The Committee also recognise the great importance attached by Indian thought to the reduction of the number of British troops in India to the lowest possible figure, and consider that the question should form the subject of early expert investigation." The Committee decided this and their Report is dated the 14th January, 1931. I wish to ask the Secretary of State if any action has been taken in the direction of obtaining expert advice on the reduction of British troops in India, in accordance with that Resolution of the Defence Committee?—Yes. We have had a number of expert inquiries, and, as a result of them, we

were able to make certain reductions last year. The general effect of the investigations that we have made goes to show that at present there is no further margin for reduction of expenditure upon a large scale without reduction of units, and we take the view strongly and definitely that it would be dangerous in those circumstances to make a reduction of units.

8244. Has the attention of the Secretary been drawn to the Report of the Simon Commission, in which the dual aspect of the British Army in India was emphasised namely its primary purpose, the defence of India, and, secondly, but none the less important purpose, Imperial Defence, and it was suggested that a contribution should be made from the Imperial Exchequer to the maintenance of this Army so far as it served this latter purpose?—As Sir Hari Singh Gour will remember, the capitation Tribunal that was appointed with the approval of the parties concerned, made an inquiry last year. They have issued to the Government a Report, and the Government are now considering that Report.

8245. But apart from the limited question of capitation, I understand the question to be a larger question of the necessity of maintaining the ratio of 2 to 1 of British and Indian troops which was settled upon immediately on the close of the Mutiny in 1857, and was done for a purpose which no longer holds good?—There never has been any question of having any particular expert inquiry to investigate percentages of that kind. The Committee and the Delegates know quite well what is happening with the general programme of Indianisation.

8246. So far as Indian Delegates represented in the Assembly are concerned, the only thing that they know is that a Military Training College has been established?—I am surprised they do not know a good deal more than that. I seem to remember that the Commander-in-Chief and Members of the Government have made more than one statement upon the question of Indianisation in the Assembly and have described how the programme of Indianisation is being expedited; how, for instance, a whole

Division, with all its ancillary requirements, is being Indianised, and so on.

8247. But the Secretary of State could not be unaware of the opinion of the Assembly on the subject of the Indianisation of a Division?—That may, or may not, be so, but that was not the purport of Sir Hari Singh Gour's question. Sir Hari Singh Gour's question implied that the Assembly knew nothing about what was happening.

8248. Turning to the Civil expenditure, it has been emphasised in more than one speech made by Honourable Members in the Indian Legislative Assembly that the basic pay of future recruits to the All-India Services should be on the Indian basis. Has the Secretary of State taken any action upon that?—On the All-India Services.

8249. Yes?—There have been a number of inquiries investigating the question of conditions for future entrants into the various Services. At present I am not able to make a statement on the subject, except to say that in certain Provinces, I think it is correct to state, reductions have been made for new entrants into certain of the Services.

8250. The point that I was making was that with the steady Indianisation of the All-India Services, the pay of future entrants should be the Indian basic pay, and not the English basic pay, and that a revised scale of salary for future entrants should be fixed, applicable to members of All-India Services only, and an overseas allowance being paid to those who are recruited from overseas?—I should have thought the real basis for the pay of any Service, whether it is British or Indian, is to get a figure under which you will get the men you want.

8251. It is only with reference to that, that I ask the Secretary of State that. Really, first-class Indians can be now obtained in India for the All-India Services on a salary substantially less than what is the present cadre?—As I say, the Government of India have been constantly considering the question of the pay of new entrants, particularly in recent months. Whether or not we shall be able to make changes, I cannot say now, but I would make this word of warning to the Committee, that suppos-

ing a change were made in the pay of new entrants, the actual saving to the Exchequer, whether Central or Provincial, would be comparatively small for a large number of years.

8252. And the longer the decision is delayed, the less will be the economy in the years to come?—I suppose that would be so.

Sir Austen Chamberlain.] Sir Phiroze Sethna,, do you want to add anything?

Sir Phiroze Sethna.] No, not just now.

Dr. Shafa'at Ahmad Khan.

8253. I would just like to put one or two questions. In the last paragraph of the Introduction to the White Paper, reference is made to the possibility of the reconsideration of the White Paper financial proposals. Would the Secretary of State be kind enough to explain if the stage for the reconsideration of those proposals has arisen now?—No; my answer would be, it has not. We have put into the White Paper a framework of financial proposals, that we think stands in the present circumstances.

8254. Then in reply to Question No. 7632, on page 873, of the Minutes of Evidence for July 21st, 1933 a question was asked by Lord Eustace Percy and a suggestion was made with which the Secretary of State seemed to agree. If that is so, and the form of reply to the question is correct, then the impression is likely to be created that not only should Federation be postponed and brought into existence when certain conditions are fulfilled, but also that Provincial Autonomy should be postponed for an indefinite period, until the finances have improved. Is that impression correct?—It is clear that there are financial difficulties to be overcome before the new Autonomous Provinces can be started, but it would be an entirely false impression, if it were deduced from that that indefinite postponement is contemplated. The point that I was making in reply to Lord Eustace Percy was simply that the financial difficulties are a factor of importance in relation to the establishment of Provincial Autonomy, and that when these difficulties are overcome, it is likely that we shall be very near the position when the financial difficulties in connection with Federation can also be overcome.

This is a very different thing from saying that either Provincial Autonomy or Federation is to be postponed indefinitely.

8255. I may say that the reply of the Secretary of State is very reassuring. I will only put one more question: Does the Secretary of State contemplate the possibility of establishing inter-regional Councils which will co-ordinate the financial activities in the various Provinces and will provide an essential link in the contact between the Federation and the Provinces?—We have not made any formal proposal on the subject. My own idea would be that under any system of Government such as we contemplate, there ought to be opportunities of discussion between the Ministers of the Provinces amongst themselves, and between the Ministers of the Provinces and the Federal Government; and when I say that, I mean particularly the Financial Ministers. I would have thought, as I think is the case in every other Federation in the world, there would be discussion of this kind going on from time to time.

8256. Could these informal discussions be crystallised and could they take the shape of regular inter-Provincial or inter-regional Councils, ultimately?—I would not wish to go so far as to define the way in which this contact should be maintained. I think it is one of those things that must develop according to circumstances; but I do say from every point of view the closer the contact between one Province and another, and between the Provinces and the Federal Centre, the better for everybody concerned.

Sir Austen Chamberlain.] Perhaps, I might say that that exhausts the list of Members and Delegates who gave notice to the Secretary of State of their desire to ask questions. We will now go round the Committee and the delegates in the usual way. These questions are without notice to the Secretary of State.

Archbishop of *Canterbury*.

8257. I only want to be sure in my own mind as to the relation between the two Houses of the Federal legislature. Am I right in thinking that it is quite clear that the Budget will be laid before both Houses?—Yes.

8258. That the appropriations in the form of demands will only be laid before the Assembly?—Yes, unless they are brought up by the Government to the Council of State.

8259. But normally they will be laid before the Assembly?—Yes.

8260. Then the Assembly has the power to reject or refuse or assent to any of these demands in the form of these appropriations?—Yes.

8261. That is not a power which in any way belongs to the Council of State?—His Grace, of course, is keeping in his mind a distinction between the votable and non-votable items of the Budget.

8262. Yes; I am leaving that out for the moment?—His question applies only to the votable items in the Budget?

8263. Quite. Then, do I understand that these appropriations in the form of demands are what is meant by Money Bills in paragraph 32?—No. A money Bill is a Bill for taxation. These would be motions for grants.

8264. Supposing the Assembly reduces or rejects any of these demands, then the Council of State comes in, because then the Government may move in the Council of State that it was desirable that there should be a joint sitting?—Yes.

8265. And the Council of State is empowered to direct such a Joint Sitting?—Yes.

8266. Therefore, before any rejection or reduction of any appropriation or demand was final, there would be a joint sitting in which the Council of State would have a very great influence?—Yes.

8267. That is what the process would be?—Yes, that is so.

8268. Then turning, if I may, just for a moment, to more general questions, some of which have been mentioned by Dr. Shafa'at Ahmad Khan, may I take it that the quotation in paragraph 32 of the Introduction, at the end of the paragraph on page 17, summarises sufficiently for our purposes the financial prerequisites for the starting of these Constitutional proposals; as apart from the functioning of a Reserve Bank, or are there any others that you would wish to add?—These proposals cover the whole field of financial safeguards. His Grace will, of course, remember, what I have

said about the general financial position of the Federal Government and the Provinces. Keeping that in mind, I would say that that paragraph does cover the field of the financial safeguards.

8269. Does it also cover what you would consider the necessary financial prerequisites for the functioning of any part of the proposed Constitution?—His Grace will see that paragraph 32 deals only with the Federation; it must, therefore, be supplemented with the paragraphs about Federal Finance, so far as they refer to the Provinces.

8270. Then you contemplate that the financial position of the Provinces must also be thoroughly satisfactory before even that part of the scheme can be entered upon, and by "satisfactory" I mean clear of deficit?—I would not restrict myself to any exact definition. Still less would I restrict myself to a phrase like "thoroughly satisfactory," not because I have not got clearly in my own mind what is contemplated, but because it is a phrase that may be defined differently by different people. Speaking generally, I should expect the Provinces to be on an even keel, that is to say, with no permanent deficits round their necks, before they could start upon a satisfactory career of Autonomous units.

8271. Then do I gather from you that you think that the financial difficulties of the Provinces, setting up Autonomy in the Provinces, may be greater than the financial difficulties in the way of the setting up of the Federal Constitution?—I would prefer really to add nothing to what I did say in some detail in my speech upon Federal Finance, and to what I have said in answer to a good many questions as to the date when either the Federation or Autonomous Provinces could be started. It is not that I have any doubt in my own mind, but with very complicated issues of that kind, I would rather not go on giving answers lest one answer that I give may appear to differ from a previous answer.

8272. I quite understand. I have only one more question of a general kind. Can you tell us at all what is in your mind as to the stage at which any financial enquiry, such as may be necessary before we can go further, should take place?

I think you mentioned such a possibility this morning. Would it be, in your judgment, before or after the passing of the Act?—I should very much like, in a question of this kind, to have the advice of the Members of the Committee and of the Delegates. My own view would be that whether the enquiry takes place during the passage of the Bill or immediately after the passage of the Bill, it must take place in time for Parliament to come to a reasoned decision for the final Executive act and that will have to be taken for bringing into operation the Constitution. Have I made myself clear?

8273. Yes. Of course, obviously, it would mean a good deal to Parliament to have that enquiry and its results before them before taking the ultimate responsibility of passing the Act?—There must, you see, be prescribed a date at which the Constitution, in whole or in part, comes into operation. Before that date is prescribed, Parliament and the Government must be in possession of the latest financial estimates.

*Sir Austen Chamberlain.*

8274. Just to get it clear at this point, by what process will that date for coming into operation be prescribed?—The date will be prescribed; in the case of the Federation, by Royal Proclamation; in the case of the Provinces, that is a matter for discussion; under the White Paper, we assume that it will take place under Order in Council.

8275. But in neither case do you propose in the White Paper that the date should be named in the Statute?—No; and for the reasons I have already given, namely, that there are so many uncertain factors in the picture.

*Archbishop of Canterbury.*

8276. Then, just to be clear, Secretary of State, you contemplate two kinds of financial inquiry: one which would be necessary, so to say, in any case, so that all the points that we have been considering should be fully and finally before Parliament; and another financial inquiry of a minor kind which will become necessary if the general condition of Indian finance were such that you felt you must fall back upon the powers

given, that you would have reached a position in which the whole matter would have to be reconsidered as to the Constitution itself, and call into conference again representatives of Indian opinion?—I think the second inquiry would inevitably emerge out of the first inquiry. Take the two contingencies. If the financial inquiry went to show that the position was satisfactory, obviously the other contingency would not arise at all. If, on the other hand, the inquiry went to show that there was not enough money with which to start the Constitution, I think immediately out of that inquiry would develop the further inquiry as to what should be the next step.

8277. Can you tell us at all the nature of the machinery which that inquiry would possess?—No, I should not at this stage at all like to be precise. My own view would be that it should be a small expert inquiry, the kind of inquiry that would not raise a lot of big political issues, questions, for instance, between one Province and another, but a small expert actuarial inquiry, really seeing how the balance sheet stood.

*Marquess of Zetland.*

8278. I would like to ask first for your ruling on this point, Mr. Chairman. Is this the appropriate occasion on which to ask the Secretary of State questions with regard to the powers of the Federal Legislature in the matter of currency legislation?—I would certainly not say that it was not a suitable occasion, but I would put this point to the Marquess of Zetland. We have had this very representative committee sitting upon the Reserve Bank and investigating, amongst other questions, just the question he is now raising. I had hoped the report of the Committee would be ready to-day. Unfortunately, it is not, but even though it is not I would have thought it was much better to reserve a discussion of this kind of issues until the time when we have got the report.

8279. I accept that, of course. There is only one other matter upon which I would like to ask the Secretary of State a question with a view to clearing my own mind on the matter. The question is with regard to the financial adviser. The first question I would like to ask is,

what type of person is contemplated for filling the office of financial adviser? I presume that it will be a financial expert whose judgment on questions of high finance would be regarded generally as authoritative. Is that so?—Yes.

8280. Has the Secretary of State got in mind an official of any kind?—I certainly could not say I have any particular person in mind, but I agree with Lord Zetland the financial adviser must be a person of considerable standing and considerable expert financial knowledge.

8281. In regard to his functions, I am not quite sure exactly what his functions are going to be. Will he have an office and, if so, will his office be an integral part of the Finance Department of Government?—He must obviously have what staff and office accommodation he requires. It will not be a part of the Finance Department to this extent that the financial adviser will be responsible to the Governor-General and the cost of his staff, whatever it may be, will be a non-votable item. At the same time, I should hope that he would work in close relation with the Finance Minister and with the Finance Department.

8282. Yes, clearly if his advice to the Governor-General is to be of any value I presume he must be familiar with what is going on from day to day in the Finance Department of Government, must he not?—Certainly.

8283. But, as I understand it, his services are to be at the disposal, not only of the Governor-General, but of the Minister?—Certainly.

8284. So that the position as I picture it is this, but I do not know whether I am absolutely accurate. I picture an official of high position with an office in the Finance Department of Government who will be kept familiar with all that is proceeding in the Finance Department of Government, who will be available to the Ministers if they wish to consult him upon any financial questions, and whose duty it will be, if he thinks that the Government are contemplating anything which will touch upon the special responsibility of the Governor-General in matters of finance, at once to bring that matter to the Governor-General's notice. Is that, broadly speaking, what his position will

be?—Yes, broadly speaking, that is what his position would be.

*Lord Rankeillour.*

8285. There are some questions arising so directly out of Sir Malcolm Hailey's report, that I think it would be convenient if I asked him about them?—Yes.

8286. Sir Malcolm, in your Estimates have you taken account of initial non-recurring expenditure in setting the Provincial machinery going?—(Sir *Malcolm Hailey.*) In setting the Provinces going?

8287. In setting the Provincial machinery going?—That has been taken into account so far as regards the two new Provinces, Sind and Bihar and Orissa. As regards the other Provinces there would be little or no additional expenditure in setting the new machinery going, other than, of course, the expenditure on the new Legislatures of which we have taken account.

8288. I have heard it suggested that there would be a considerable displacement of personnel; some officers, perhaps getting towards their age limit, will not care to go under the new system. Do you think that that might lead to some temporary inefficiency in the collection of revenue and so on?—I should hope that the numbers affected by retirements of that nature would not be so great that there would be any inefficiency in the collection. It is a very large establishment concerned with the collection of Land Revenue, and if a few men, it might be, towards the end of their career retired under the new conditions that ought not to disturb the whole machinery.

8289. You do not think it would for a time have any appreciable effect on collection?—Not for a time, certainly.

8290. You refer to the loss of currency receipts. Have you taken into account any other expenditure that may be incurred as part of the process of setting up the Reserve Bank? Did not the Bill of 1928 contemplate some considerable expenditure in that regard?—The item of which we have taken main account here has been the temporary loss of currency receipts.

8291. Is that the only expense that will be incurred owing to this new financial arrangement of the Reserve Bank?—That will be the only direct loss to our revenues as revenues.

8292. But other expenditure will be incurred, will it not?—(Sir *Samuel Hoare.*) I do not think there will be other expenditure. Obviously, substantial reserves will be needed, but those reserves will be a transfer of reserves to the Reserve Bank. The capital of the Bank will have to be found. Here we are rather trenching upon a discussion about the Reserve Bank. I think Lord Rankeillour will find, when he has the Reserve Bank Committee Report, that the only new money to be found will be the share capital which will be found presumably by private subscription. I think Sir Purshotamdas Thakurdas said that.

*Sir Purshotamdas Thakurdas.]* Yes.

*Lord Rankeillour.*

8293. Perhaps I had better not pursue it in the absence of the report?—(Sir *Malcolm Hailey.*) I think there will be no additional expenditure which will affect our budget. (Sir *Samuel Hoare.*) Is that so, Sir Purshotamdas?

*Sir Purshotamdas Thakurdas.*

8294. I think the noble Lord is referring to the last page of Sir Malcolm's Memorandum, where loss of currency receipts under (a) (iii) is put down at one crore. Is it a loss or only income which is deferred until the Reserve Bank give you the surplus profits?—(Sir *Malcolm Hailey.*) Yes, I think I made that clear in the body of the Memorandum itself.

8295. I thought the noble Lord had perhaps overlooked it?—It is perhaps best to regard it as a temporary loss for budgetary purposes.

*Lord Rankeillour.*

8296. Do you contemplate that, suppose there were to be a considerable period of unrest in India, it might be necessary to strengthen the reserves of the Savings Bank?—(Sir *Samuel Hoare.*) I think we had better look into that question. Offhand, I would say that in

the sense in which you are asking the questions there are not reserves of that kind. (Sir *Malcolm Hailey*.) The Savings Bank is on the same basis as are other loan operations.

8297. Perhaps I had better put it because I know it has been suggested that there might in a transition period, be a considerable run on the Savings Bank. Have you thought of that possibility?—I think we have made no anticipation of that specially. That would apply, of course, if there were a run of that nature; it would, first of all, fall on our currency, of course. There would be a run on our note currency. There might be a disposition to take money out of the Savings Bank, but that would be a part of our general loan operations. There is no specialised reserve for the Savings Bank itself.

*Sir Austen Chamberlain.*

8298. Do you mean that the security for the deposits in the Savings Bank is the general revenues of India?—Yes, the general revenues

8299. As in this country?—Yes.

*Lord Rankeillour.*

8300. You are familiar with the questions raised by Service Officers as to pension rights and the like and commutations of pensions—compounding—that were raised in this Committee?—Yes.

8301. Do you think there may be a fairly formidable charge with regard to compounding? I think the servants have a right under certain circumstances to ask for their pensions to be compounded up to half?—Yes.

8302. Have you taken that into account in your forecast?—No; we took no special account of that. (Sir *Samuel Hoare*.) I suppose it could not amount to a large sum. (Sir *Malcolm Hailey*.) No. It would involve, of course, a borrowing to meet that, but I do not think anything so large as really to affect our position.

8303. You do not think it would be a serious item?—Not one that we need consider in this respect, I think.

8304. I think in your Memorandum you say that there would be no large addition to Provincial revenues from their own

resources, or words to that effect; at least, you cannot depend on any large increase?—No.

8305. I think you say in Part I, Section 5, that you cannot contemplate any very great reduction in Provincial expenditure?—Might I, with reference to the previous question, say that there are possibilities of growth in Provincial resources, but they are limited in certain directions. The major head of revenue—Land Revenue—is, of course, not at all elastic, but there are possibilities of increase in such heads as Excise or Stamps.

8306. A natural increase?—A natural increase, and in some cases of additional taxation.

8307. But taking the balance sheet, if I may say so, of Federal and Provincial revenues as a whole, an increase, so far as it was not a natural increase, would have to be supplied from general sources, from Federal, not from Provincial, sources?—Any major increase would probably have to come from Central sources, yes.

8308. There is a considerable indebtedness already from the Provinces to the Centre, is there not?—There are some of the Provinces which have considerable overdrafts with the Centre.

8309. In dealing with an increase in Federal revenue you will be in practice restricted very largely to indirect taxation, will you not, because with exceptions you do not contemplate direct taxation in the States, and therefore the British India representatives would not see their way to assent to direct taxation which they alone had to pay?—It is, of course, contemplated that any direct taxation would have to be British Indian taxation for a large number of years, at all events.

8310. Any direct taxation exactly; and any indirect taxation would not be collected by the Federal Officers but by the Officers of the States themselves in the States?—Such as Customs?

8311. Yes?—I think that is a question which would have to be decided—the extent to which collection would be made either by a Federal or a State's Officer is a question which would have to be decided in the negotiations which would precede the drawing up of the Instruments of Accession. I think it may be



contemplated that in some States a claim might be raised that collection should only be by States' Officers, but that would be a matter for negotiation and arrangement then.

8312. In any increase of revenue that may come from the States (the matter has already been raised) there would be, if I mistake not, 0.7 crores to set against it for tributes which, in the course of time, it is proposed to wipe out?—The net amount would be the tributes which are about 74 lakhs minus the immunities enjoyed, possibly about 50 lakhs altogether.

8313. I want, if I may, to come to paragraph 141, to clear up the position there. I think the Secretary of State said this was an emergency provision which was, to some extent, discussed this morning?—(Sir *Samuel Hoare*.) Yes.

8314. Is this an overriding provision which cannot be affected by any Instrument of Accession?—We are assuming the States will have agreed to this arrangement.

8315. Supposing these provisions were a Bill, this would be a provision, presumably, which could not be contracted out of by any Instrument of Accession?—We should certainly assume that it would be the general condition, but I would not here and now like to say that its application will be exactly uniform in every State, for this reason, that in the Instruments of Accession you have got to take into account the special position of certain of the States with their tributes and immunities, and so on, and it may well be that in taking them into account there might be some reaction upon a proposal of this kind, but, short of that, I am assuming that that will be the general plan.

8316. In other words, this will be a condition that you contemplate in any Instrument of Accession?—We should begin with this, certainly.

8317. But not an overriding condition. You have answered me?—Lord Rankeillour will see at once that the phrase "overriding condition" does not accurately apply. We are dealing in the Treaties of Accession with treaties between two powers, to put it in that way, and you cannot in an Act of Parliament put a condition that overrides the treaties

that you are necessarily going to make. What you can do is to say: "This is what we want," and you can do your utmost to see that the Treaties of Accession conform with this arrangement. If in any detail they do not conform with this arrangement, then it is for the Crown to consider whether it is worth on those terms accepting the accession of the State.

8318. Yes, I see. Therefore it will be subject to the terms of any Instrument of Accession. I think that follows. About the prescribed basis, before you issue the Order in Council you contemplate some form of inquiry?—I did not quite follow Lord Rankeillour. What point is he dealing with now?

8319. Paragraph 141, too, and the words "prescribed basis" come in several of these conditions?—Yes.

8320. That would be a basis prescribed by the Order in Council?—Presumably, yes.

8321. You presuppose some inquiry before that, do you not?—Yes.

8322. That really will involve something like a corporate assessment, will it not, in the cases of the States, of the resources of the States, to see on what terms they can come in?—I would have thought it would have been a less extensive inquiry than that. This is a fairly simple issue.

8323. You will not have anything in the nature of a public inquiry?—They will all be treated in negotiations, will they?—I think so.

8324. With regard to the taxes, some of the taxes, though assessed centrally, would be collected by provincial officers?—Yes.

8325. Supposing you find any negligence in collection, what remedy or sanction have you?—Paragraphs 125, 126; paragraph 125 is really the applicable paragraph.

8326. If you should find any similar want of stringency of collection in the States you would have no such sanction there?—If Lord Rankeillour will look at paragraphs 127 and 129 he will see that the Governor-General will be empowered in his discretion to issue general instructions to the Government of any State Member of the Federation for the pur-

pose of ensuring that the Federal obligations of that State are duly fulfilled.

8327. You do not contemplate any Inspectors-General in the States?—No, not at all.

8328. With regard to the variable Grants in Aid, how would that work into the Legislative procedure. There was a good deal of talk about them this morning. There would be Grants in Aid. Will they come in the form of taxes in a money Bill with the necessary variable remissions, or will they come as appropriations not covered by a money Bill?—I will ask Sir Malcolm Hailey to deal with that question. (*Sir Malcolm Hailey.*) It is contemplated in the White Paper that the procedure will be automatic following the prescribed rule of assignment, and it would work in the following manner. The Province would have means of ascertaining from the Centre what sum, based on the estimates of the Central authorities it would be able to place in its budget as receipts under that head for the coming year. It would take account of those receipts, and they would form then a part of the provincial budget which in the same way has its own heads of receipts. No special appropriation would in those circumstances be required.

8329. Would not it come before the Federal Assembly?—No, because it would follow this rule of assignment which would be prescribed by an Order in Council.

8330. And once the Order in Council were made this would go on automatically without any opportunity for the Federal Assembly to interfere with it?—Yes. Under the terms of the White Paper this is an operation following an Order in Council, and the Federal Assembly has no power of varying it in any way.

8331. One other question on this head. A good deal was said this morning about the difficulties of procedure between the two Houses under Proposal 48. These would be got over if you had your appropriations covered by a Bill as they are here, would it not; then that would be a Money Bill?—Yes. If I might say so it might be a matter for the consideration of the Select Committee whether the Constitution should not prescribe that appropriations should be covered by an Appropriation Bill as in the case of Great

Britain. In that case the Bill itself would go to the Council of State.

8332. It would proceed just like the Taxing Bill would under the present proposal?—Yes.

Archbishop of *Canterbury.*

8333. But such a Bill could not be initiated in the Council of State?—No, but it would proceed from the Assembly to the Council of State in the same way as a Taxing Bill.

Mr. *Zafrulla Khan.*

8334. May I put it in this way, that the real difficulty is not whether you want to put it in the form of a Bill, or in the form of demands. The question is what do you want actually to do? Do you want them to be submitted to the Council of State in the ordinary way or not? Once that question is settled then you can put it in whichever way you like. The present position seems to me to be this: the Finance Minister, if he has a majority of the Assembly approving of his demands and willing to grant them, need not go to the Council of State at all, although the position may be that if there had been a Joint Session all those grants may not have been granted by a Joint Session; but, if any of his grants are reduced or rejected by the Assembly, and he is confident that a Joint Session will give them to him, he could appeal to a Joint Session. If you want to change that position you can change it by saying in your proposals that the appropriations or demands for grants will go to both, and that the grant is to go to Joint Session just as a reduction or rejection would go to Joint Session. The question is not whether they go in the form of a Bill, or whether they go in the form of demands?—That is a question of policy which I suggested the Select Committee might have to consider when it considers the relations of the two bodies of the Legislature. I was only indicating one form of machinery by which the budget could be brought before the Council of State if it were decided on a question of policy that it was necessary that that should be done.

Marquess of *Salisbury.*

8335. In that case the Council of State would be able to amend the Appropria-

tion Bill ?—In the same way as any other Bill resulting eventually in a Joint Session if there was a difference between the two bodies.

8336. It might result, or the other House might agree ?—It might agree.

Sir Akbar Hydari.] There must have been some reason for making this difference, and we should really like to know why paragraph 48 has been drafted as proposed : why, for instance, the Council of State is precluded from proposing with regard to a demand grant that so much shall be spent upon railways. It can oppose if that demand has been passed by the Legislative Assembly. Why is it not desirable for the Council of State to say that so much should not be spent on railways, but so much on aerodromes or aviation, because they are all Federal subjects.

Mr. Zafrulla Khan.] The latter they could not say in any case. You cannot propose any increase.

Mr. Austen Chamberlain. Sir Akbar is putting a question to the Secretary of State. May the Secretary of State be allowed to answer ?

Sir Akbar Hydari.

8337. I mean the Council of State would say, "We want this demand to be reduced on railways," and they would say the reduction should be used for civil aviation. We should like to know why such a position which could be taken up by the Lower House should be denied to the Upper House ?—I think, Mr. Chairman, what I had better do is this. I have been impressed by the number of questions that have been asked upon this subject, and I would prefer to think them over. Certain new issues have been raised in the discussion, and I would prefer then to put in a Memorandum to the Committee, both to explain in rather greater detail the reasons why we made this proposal, and also to take into account some of the suggestions that have been made in this discussion. I think, if I might do that, it would be better than my attempting to answer a question of that kind on the spur of the moment.

Sir Austen Chamberlain.] I think it would be very helpful to the Committee.

Mr. M. R. Jayaker.

8338. May I suggest to the Secretary of State, in that case, would he be pleased to state to the Committee in that Memorandum for the benefit of the Committee what is the present procedure in the two Houses as regards demands for grants and appropriations, and how far the proposals made in the White Paper will be a departure from the present position. That will be helpful to the Committee and the Delegates ?—I will certainly do that.

Sir Manubhai N. Mehta.

8339. And also how it would satisfy the demands of the States ?—That also I was proposing to do.

Nawab Sir Liaqat Hayat-Khan.] On this matter, I might point out that the States are all unanimous, and we would request the Secretary of State when preparing his Memorandum to keep that point in view. We were under the impression that, as far as possible, the powers of the two Houses should be kept equal ; but in reply to certain questions asked by Lord Salisbury to-day, we were not quite satisfied with the position as it would be. We would, therefore, request when a decision is arrived at, that this point of view which comes unanimously from all sections of the States, will be kept in view.

Sir Hari Singh Gour.

8340. In that case, the Secretary of State may also further consider the question that if he accedes to the demand that is made by the States, whether there is any necessity for bicameral Legislation in the Centre, if the two Houses are merely replicas of each other ?—Yes. I will take all these points into account that have been raised in the discussion, and I will tell the Committee quite frankly that certain points have been raised in this discussion that had not occurred to me before. After all, that is one of the chief reasons why we are here.

Lord Rankeillour.

8341. Passing from that, with regard to the financing of the Reserved Services, is it not one of the strongest arguments for full Provincial Autonomy that as long

as you have Reserved Services, you concentrate public criticism and hostility on them. Would that not apply to the Reserved Services at the Centre, equally?—I did not follow the first part of the question.

8342. Is it not one of the strong arguments for full Provincial Autonomy that, as long as you have Reserved Services (I am talking now of Provincial Services), you concentrate public criticism and hostility on those Reserved Services, and, therefore, in the Provinces it is suggested that there should be no Reserved Services, but in Federal matters, would not that argument apply equally, that you would concentrate public criticism and hostility on the Reserved Services and that, therefore, there would be pressure to reduce them?—No. My own view would be that the cases are not analogous. I would welcome Sir Malcolm Hailey's view upon this point. My own impression is that a good deal of the trouble in the Provinces has been due to the fact that the two classes of Departments impinge so much upon each other. I think if anyone will look at the Departments of Administration in the Provinces, they will see that that is the case, whereas, in the Federal Centre you will have much more defined units, the unit of Defence I quite agree at certain points impinging upon other fields of administration; but, upon the whole, a self-contained unit, and you will, therefore, not have the kind of difficulties that you had in the Province in which you have two sets of Departments quite separate; but, in actual practice, those Departments in many directions impinging upon each other—Will you amplify that, Sir Malcolm? (Sir *Malcolm Hailey*.) I think that my answer would be in the same terms as that of the Secretary of State. It is a fact that in the Provinces much of the difficulty has occurred because the work of the various Departments does interlock to such an extent. That was one of the real arguments against dyarchy. You had really what was, in effect, a unitary Government in the sense that all its Departments were working together, but it was subject to two heads of control. That was a great argument against dyarchy, and it was the chief source of criticism. Where you have, as you will have in the

Central Government, a Department such as the Army, entirely self-contained, that element, at all events, will not be reproduced. There may, as I think Lord Rankeillour was suggesting in his question, be a tendency to attack the Reserved Departments, because they are Reserved, and because a Legislature which feels that it is deprived of power in any particular direction is always provoked to attack because of that interference with its powers. To that extent, there must be, of course, attacks upon the Reserved Departments; but they will not be attacks of the same nature as we used to have in the Provinces on such Reserved Departments as the Police, and so forth. One of our difficulties was that the Police Administration day by day might be made the subject of attack in the Legislature by question or criticism, and it was felt that the Legislature itself had no particular control over it or no final control over it. Now that question would not arise in regard to the Army. The Army as a whole, and its expenditure, might be the subject of attack, but it would not be its day to day operations, and I would use that as an illustration of the kind of difference that would arise in regard to the criticism of the Reserved Departments at the Centre, as compared with criticisms on the hitherto Reserved Departments in the Provinces.

8343. But when you are making up a Budget, Sir Malcolm, every item of expenditure, to some extent, impinges on the others, and the largest item impinges on them all, so, surely, there would be pressure from the other Departments to reduce the amounts for the Reserved Services, would there not?—Yes, as a budgetary matter, certainly.

8344. But also, would there not be pressure from the Provincial Governments, who would say: So much is taken up by Reserved Services at the Centre that there is not enough over to ease our own burdens? That would be a new form of pressure?—That is a form of pressure which at present, undoubtedly, we are accustomed to.

8345. But would it not be increased, under these conditions, with the greater powers of the Provincial Legislatures?—Only to the extent that the Autonomous Local Governments might have greater power and greater position themselves.

From the public point of view, it would be very much the same.

8346. But it is not really a matter of opinion; almost one man is as good as another?—Yes; certainly.

8347. Then there is only one other sphere upon which I want to ask Sir Malcolm Hailey a few questions. You remember some of the Service officers were alarmed lest the money should not be forthcoming to pay the claims which they were legally entitled to. I think there is no automatic drawing on what we should call here the Consolidated Fund for salaries in India, is there? As you know, certain salaries, like the judges' salaries, are automatically paid out of the Consolidated Fund—not voted; but there is no such arrangement in India?—No, there is no such arrangement there.

8348. Now I am bound to suppose that in some instances things will not go quite smoothly. Supposing there should be some Constitutional difficulty, could the Governor-General order payments out of the Exchequer on his own prerogative without going through the Ministry of Finance?—In the last resort, he could, in discharge of his special responsibilities, require payments to be made in that way.

8349. Only if that amounted to a breakdown of the Constitution?—No.

8350. He could order payments to be made?—If he, on examining, as, no doubt, he would examine from time to time the receipts and expenditure of his own Local Government, foresaw that at any particular stage the expenditure would be so much in excess of receipts that there would be insufficient to meet the pay of the Services, he could, under his special responsibilities, at that stage stop all further expenditure, except expenditure on the Services.

8351. And he could direct that the expenditure on the Services, what I may call statutory expenditure, should be made, that payment should be made out of the Exchequer on his own prerogative?—Yes, he would issue those orders through his Finance Department in the usual way as head of the Government.

8352. Could he raise money on his own prerogative on Treasury Bills?—No. The preceding situation, to which I gave an answer, was one in which he merely foresaw that money was getting short.

I think Lord Rankeillour's present question refers to a position in which he found that money did not exist at all.

8353. The Exchequer wanted replenishing?—In that case, he would have to, if necessary, override his Ministers to the extent of imposing taxation under his own powers; and if it were likely that there would be delay in the operation of that taxation, he would under his own powers have to raise a loan from the Central Government, or otherwise; but that might amount to a complete breakdown of the Constitution in which he would take over the Government to himself.

8354. Could he under no circumstances raise a loan?—When he overrides his Ministers and takes over all the powers of the Local Government, then he, as the Local Government, would raise the loan.

8355. He would raise the loan only after having become the Government?—Or overriding. It would be just a question whether it would be considered merely overriding in discharge of his special responsibilities or acting under Proposal 105, which describes his powers in the event of a breakdown of the Constitution.

8356. Have you considered that for the purpose of discharging what I may call statutory liabilities, he might have a fund of his own to which certain sources of Revenue could be assigned?—That question has been raised, Sir, but when we have considered a proposition of that nature, we have rather looked at the figures of what would be necessary to the Governor to maintain the Services as a whole, and not merely to meet statutory payments. It would be necessary for him to provide not merely for the payments to the All-India Services, but for the payment of all Services in the Province. I have some figures here which would show what the relative proportion of payments to Services is, as against other expenditure of a Local Government. If it would interest you, I might say that in the United Provinces the payment to Services, as a whole, amounts to 40 per cent. of the total expenditure of the Government; the remaining expenditure is the debt charges and pensions, and in the large number of payments which go

in the form of grants to Local Governments, payments for keeping up communications, and so forth; but in order to maintain the Services, the Governor, therefore, would have to have at his disposal something like 40 per cent. of the total income of the Province.

8357. Statutory payments?—(Sir *Samuel Hoare*.) Sir Malcolm is making the practical point that it is very difficult to draw a distinction for this purpose between one Service and another. The statutory payments would be far less than that figure which he is including in that payment, the payment for all the Services, whether Secretary of State Services, or not. (Sir *Malcolm Hailey*.) In our Local Governments, what Lord Rankeillour has described as the statutory payments, that is to say, the payments to the Governor, the Judges, and the All-India Services, which, I think, were, perhaps, in his mind, amount only to 66 lakhs out of 1,330 lakhs, a small part. I was, therefore, directing the attention of the Committee to the fact that the Governor in order to carry on the administration in the event of money being insufficient to pay the Services, would have to have in his possession not that small sum of 66 lakhs, but a larger sum amounting to 40 per cent. of the whole Revenues of the Province. That, of course, would greatly increase the difficulty of making any arrangement such as that suggested by which there should be placed in some reserved purse of his own sufficient to meet the pay of the Services.

8358. But could that be done by the Governor-General himself—a fund of that sort? I throw it out, I do not press it. Only one more question. With the doubtful exception of paragraph 141, any powers of taxation over the States would be derived from the Instrument of Accession, would it not, and not from anything in the Constitution Act?—The form, as I see it, would be that the Instruments of Accession would accept this or that section of the Constitution Act; I imagine that is the form the Instrument of Accession would take. They would say, “We accept this Act, to this and that extent.”

*Lord Eustace Percy.*

8359. How do you contemplate that the Secretary of State or the Crown will

acquire the power to accept an adhesion from a State on condition? Will the Constitution Act lay down the limits of the discretion of the Crown?—No. In the first instance, the discretion is with the Crown.

8360. Can the Crown in its exercise of paramountcy commit the future Federation without the consent of the House of Commons?—(Sir *Samuel Hoare*.) Lord Eustace Percy is raising a Constitutional point. Off-hand, I cannot say whether there is anything in it, or not. My inclination is to think that there is not, but I should like to look into it.

*Sir Reginald Craddock.*

8361. Mr. Chairman, I would like to ask the Secretary of State one or two questions. He has used the phrase of the Provinces being on an even keel. Does he mean by that merely a balanced Budget under existing circumstances, or finances in which some of the economies, very stringent economies which the Provinces have had to make, have been, to some extent, at all events, restored?—I think we should have to judge every case upon its merits. What I would wish to avoid is any idea that there is a large fund upon which the Provinces can draw, and that all they can expect if Provincial Autonomy is to start at a reasonably early date, is that they will start with a balanced Budget. When I am asked what I mean by a balanced Budget, I would say a Budget not for a particular twelve months, but a Budget that looks as if it will carry them on for a bit. Sir Reginald asked whether in a balanced Budget I contemplated emergency expenditure. Was that his question?

8362. No. Very large economies made under circumstances of great pressure: Does he contemplate that in respect of some of those economies, at all events, the expenditure will be restored before he would reckon his Budget at an even keel?—Yes; I am contemplating that the special inquiry to which I have drawn the attention of the Committee would take into account the conditions in each Province; but, if Sir Reginald is anxious about such questions as the emergency pay cuts—I think I am right in saying that that is one of the issues that is in his mind.

8363. That was one ; there are one or two others ?—I should certainly contemplate that an even keel for a Province would mean the power to remit cuts of that kind.

8364. There are certain Departments of which I have had considerable experience in the two Provinces that were under my charge—Irrigation and Forests. I think we have heard before the Committee by one of the Service Members—at all events, it is a matter of fairly common knowledge, that those Departments have been considerably cut, especially the Forests ; that numbers of Superior Officers have been reduced, and that the Departments carry on now in an emergency condition. For example, the reduction of the Public Works and Superintending Engineers in the Province, the Conservators of Forests, and so on. Those may be necessary as emergencies, but if the Forests estate which is very important, is to develop with any success, you must have sufficient supervision over the Forests, and, similarly with Irrigation. I am given to understand that in the Central Provinces the charge of Irrigation has in many cases been given over to the Engineers of Roads and Buildings, which, of course, would only be a very temporary arrangement, but those who know are aware of the difficulties that an engineer who is only accustomed to roads and buildings has in controlling and administering a large Irrigation works. Would the Secretary of State then consider that some restoration, at all events, of the efficiency of Services of that description should be made as a condition precedent, to use his own phrase again, so that the Province may be on an even keel ?—I would certainly assume that in this financial inquiry an account should be taken of the assets of a Province and of the best way to develop them, and so on ; but I cannot go further than to say that each Province must be considered upon its own merits.

8365. I understand that, Secretary of State, but I wanted to know whether he would not contemplate that there would be, at all events, some restoration of efficiency and supervision, which have had to be sacrificed on account of stringency of finance ?—I would have thought it was impossible to go further than

L106RO

this, to say that in the inquiry into the financial position of a Province upon the eve of Provincial Autonomy coming into operation, account must be taken not only of the Revenue, direct Revenue and direct expenditure of a Province, but also of its assets, and whether it can maintain the kind of organisation, without which its assets would go to seed.

8366. Then there is another point I would just like to ask a question about ; it is not quite plain. What are the contemplated arrangements about the possible expenditure on, say, famine relief ?—If a Province is in very distressed circumstances, how will expenditure on famine relief, which might in conceivable circumstances be very large, be obtained ? What are the resources ?—I should say that a famine which does not amount to a national emergency would have to be met by the Province. If it was of such magnitude as to amount to an emergency, then the emergency provisions in the financial paragraphs would come into operation.

8367. I mean, for example, an expenditure of, say, a couple of crores, in the Central Provinces, which has been attained in my experience. Would the Federal Government lend that money ? How would the Province obtain that ?—(Sir Malcolm Hailey.) I think, Sir, it will be a matter for the consideration of the Committee, in the first instance, whether the Constitution should contain regulations similar to those in our present Devolution Rules which prescribe that each Province must keep up a famine reserve fund. Sir Reginald knows the present procedure there quite well. That is to say, that each Province has year by year to set apart a certain sum of money which stands as a reserve for expenditure on famine. When the reserve has reached the prescribed figure, the Province has no further obligation to add to it. If the expenditure involved in meeting a famine exceeded the sum which was at the disposal of the Province by virtue of that reserve, then, in the first instance, it would have to borrow from the Central Government in order to meet that expenditure, and it would have to repay that expenditure in the ordinary way by equated payments. I can conceive circumstances in which the famine might be so severe that it would actually be necessary for the Central

Government to make a grant to it for that purpose ; but what I have described is, I think, the normal procedure that would be followed in the case of a famine.

8368. I am very glad to hear that. What I did not know was whether under the new Constitution arrangements of that sort would still be continued ?—I might venture to suggest that there are one or two matters in our Devolution Rules which will have to be brought to the notice of the Joint Select Committee. The famine reserve fund is one, and the constitution of a Finance Department is another. They do not form part of the White Paper, and at some stage it may be necessary for the Committee to consider them, with a view to making recommendations about them.

*Sir Joseph Nall.*

8369. With regard to Proposal 145, may that be described as retaining in the hands of the British Government, subject to the control of the Imperial Parliament, certain control over financial matters ?—(Sir Samuel Hoare.) That would be a very wide question to base upon No. 145, and it would be a very wide answer if I had to give an answer to it based upon No. 145.

8370. May I summarise what it does ? Under Proposal 139 it retains in the hands of the British Government the allocation of the Provinces' Income Tax. Is not that so ?—Sir Joseph means over the plan of distribution ?

8371. Yes ?—Yes ; we are contemplating an Order in Council for that.

8372. It also retains for prescription the basis upon which any part of the Provincial income tax is to be allocated to the Provinces or to a particular Province ?—It means, in a sentence, that under the Constitution Act and under the Order in Council we keep the general framework of the way in which the taxation is going to be divided under the control of Parliament ; but saying that I do not think goes half as far as the question that Sir Joseph has just suggested.

8373. So far as it does go, would the Secretary of State say whether any period for the exercise of this power is proposed, or is it permanently retained ?

—Yes ; if you will read the proposals about the division of the income tax you will see there is a period contemplated.

8374. That is what I want to have made clear. You have made in Proposal 139 a certain prescription for three years and another one for the next seven years, but, as I read the proposal, the subsequent period has no time-limit to it. Is that so ?—There is a prescription. For the first period we contemplate this period 10 years.

*Lord Eustace Percy.*

8375. So far as the basis of the prescription is concerned, that basis, whether you take the basis of residence or of collection and so on, may be varied by Order in Council from time to time, and probably would be varied after five years, after expert inquiries into the conditions of the Province ?—Quite possibly.

*Sir Joseph Nall.*

8376. That power would still remain for a further revision after 25 years or more ; is not that so ?—No. It is inconceivable to me that the original prescription would not have been made before 25 years. When the original prescription is made, then we contemplate the arrangements continuing without further intervention from Parliament.

8377. I understand from your answer to Lord Eustace Percy just now it will be competent to vary the original prescription at a later date ?—No. If I gave an answer that implied that, I did it under a misunderstanding. I am not contemplating a change after the original prescription.

*Lord Eustace Percy.*

8378. May I suggest to the Secretary of State that there is a point to be considered here ? I think the distribution of income tax, it is generally admitted, would have to be made on the basis of quotas fixed from time to time as a result of expert inquiry ?—Yes.

8379. And if the Secretary of State does want to reserve permanently the prescription by Order in Council of those quotas, but it is purely a technical operation and he means to keep his power open for that technical operation, but he means to limit it so that it does not give the



Crown power by Order in Council to prescribe either the percentages or whatever it may be of distribution, I think there is a point to be considered?—Yes; I am obliged to Lord Eustace for making the suggestion. I will look into it.

*Sir Joseph Nall.*

8380. Turning to Proposal 141, generally by Order in Council contributions from the State Members may be prescribed. Is it intended to retain that for revision from time to time, or is that only an initial provision?—We contemplated that it would be an initial Act, not a permanent power of intervention.

8381. Is it fair to say that the amount, or the incidence, of this provision of the States will be governed by the surcharges levied by the Federal Legislature?—I think if there is a difference between Sir Joseph and myself it is this: He seems to think that we intend to prescribe a whole series of details and to prescribe them from time to time. That is not our intention. Our intention is to prescribe the general principles.

8382. Having prescribed the general principles in Proposal 141 does it not follow that, unless the basis is changed from time to time, the amount actually to be paid or contributed by the States will be governed by the volume of surcharge levied by the Federal Legislature?—I think that is so.

8383. To that extent, the Federal Government will affect the volume of taxation to be paid by the States?—I think that is bound to be so, but let no Member of the Committee forget the fact that the Federal Government is a Government composed of the States as well as of British India.

8384. So long as the power to prescribe indicated by Proposal 141 is proposed to remain in power in case of difference of an acute character, the basis could be altered by an Order in Council?—It is very difficult to follow these very detailed questions. My view would be that it might often be necessary to have a new Order in Council, but I should like to look at the question and to see what its implications are.

J.106RO

*Sir Austen Chamberlain.*

8385. Does not paragraph 141 relate to surcharges imposed by the Federal Legislature?—Yes.

*Sir Austen Chamberlain.]* Has that anything to do with an Order in Council?

*Sir Joseph Nall.*

8386. Proposal 141 says: “. . . each State-member . . . will contribute to Federal revenues a sum to be assessed on a prescribed basis.” The Order in Council could prescribe the basis on which the States should make a corresponding contribution as and when these surcharges are made?—I think we must look further into the use of the word “prescribed” and the word “prescription.”

*Sir Austen Chamberlain.*

8387. Does paragraph 145 which defines “prescribed” refer to the word “prescribed” in paragraph 141?—Sir Austen has put his finger upon the point which had just occurred to me. I am not sure that it does, and I would like, after this discussion, to look into it. I think Sir Austen is right. I think there is an error in drafting here.

8388. Would it be possible for you to look into that later this afternoon and give a considered reply to Sir Joseph Nall's question to-morrow?—Yes, I think we could certainly.

*Lord Rankeillour.]* And paragraph 144 apparently contemplates no time limit.

*Sir Joseph Nall.*

8389. There again, surely that is a remaining power where prescription will be resorted to from time to time?—These very intricate questions do make it extremely difficult and they do point very much to Members of the Committee and Indian delegates following, if they would, the suggestion that we have given them two or three times, namely, that they should give me notice of them wherever they can.

*Sir Austen Chamberlain.]* I am sure we all recognise the extreme difficulty of dealing with all these matters of such detail, and, at the same time of such importance, in answer to questions of which you have had no notice, and it

was for that reason that I suggested that perhaps you would give a considered reply to-morrow, if Sir Joseph Nall was good enough to accept that suggestion.

*Sir Joseph Nall.*

8390. May I say, Sir Austen, I have no desire for a moment to ask questions which would be difficult to reply to, if they could be asked in writing; that would be obviously more agreeable to everybody concerned; but these questions which I ask now arise from questions answered this morning, and were not questions which I originally intended to put. They have arisen from questions which were asked this morning. Departing from that, what I want to ask now is this: Whilst the allocation of these revenues may be prescribed by Order in Council, and not by the Federal Assembly who will prescribe the precise detail of the income tax, its amount, and the scale of incomes to which it will be applied?—I think that again is a question that I had better deal with to-morrow in a general statement.

8391. Is it intended that the scale of income tax should be determined by the Assembly, or by both Houses?—Is it the intention of the authors of the White Paper that the scale or rate of income tax should be determined by the Assembly, or by both Houses, as the case may be?—By both Houses.

8392. That is the intention?—Yes.

8393. Does it not follow that if the ultimate destination of these revenues may be prescribed by Order in Council that will profoundly affect the policy of the Assembly as to whether it shall levy income tax at a high rate or a low rate, or at all?—No, I do not think so, because the Assembly will be in no doubt as to the terms upon which the income tax is assigned.

8394. The Assembly will be required to provide for a certain aggregate revenue in the budget, and would it not be faced with this, that if it raises a portion of that revenue by income tax the incidence will be over a certain restricted field, whereas, if it raises that revenue by indirect taxation it will be over a wider field, and if the

destination of the revenue from income tax is upon a basis from which a large proportion of the Assembly dissent they will be disposed to raise the revenue indirectly rather than directly?—I should not have thought so. You will have the two points of view in the Legislative Assembly, the one point of view tending towards supporting direct taxation, the other point of view, I dare say, strongly represented by the States, in favour of reducing indirect taxation.

*Lord Eustace Percy.*] Is there a misunderstanding here? Does Sir Joseph Nall read this prescription as to the proportions in which income taxes will be assigned in the Governors' Provinces as meaning the proportions in which it will be levied in the Governors' Provinces? That is not intended.

*Sir Joseph Nall.*

8395. No. What I am asking is this: If the product of the tax is assigned in a manner from which any considerable element in the Assembly dissents, the Assembly may be disposed to raise its revenue by some other tax the destination of which is not subject to an Order in Council?—There would be a great many cross views in an Assembly (there are bound to be) but I do not see the kind of contingency arising that Sir Joseph contemplates.

8396. Then may I ask does the Secretary of State think that this control by Order in Council is compatible with what is called fiscal autonomy?—It is not a control in the sense that Sir Joseph is suggesting. It is the framework of the scheme upon which taxes will be assigned. It does not seem to me to have anything to do with the fiscal autonomy convention at all.

8397. Is it not, in fact, the power to divert to the Provinces a considerable proportion of the Federal tax?—Surely that is inherent in any Constitution scheme, namely, that you must make an assignment of the revenue between the Centre and the units. It is nothing more than that.

*Sir Austen Chamberlain.*

8398. May I ask a question? Is this assignment of a proportion of income

tax to the Provinces meant to be a recurring operation, or an operation undertaken once and for all?—It is meant to be an operation taken once and for all, and arising out of the Constitution Act.

8399. I think that is what you had in mind?—I would go further, Sir Austen, and say that if we can make the financial arrangements in time it might well

be advisable then to put the arrangements in the Constitution Act.

Sir Joseph Nall.

8400. I am still not quite clear as to whether this overriding power of allocation of revenue is compatible with what is called fiscal autonomy?—I do not see any connection between the two. It may be very stupid, but I see none.

(The Witnesses are directed to withdraw.)

Ordered: That this Committee be adjourned to to-morrow at 10-30 a.m.

28th July 1933.

Present:

The MARQUESS of LINLITHGOW in the Chair.

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Reading.  
Earl of Derby.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Lord Eustace Percy.  
Miss Pickford.

The following Indian Delegates were also present:—

INDIAN STATES REPRESENTATIVES.

Rao Bahadur Sir Krishnama Chari.  
Nawab Sir Liaquat Hayat-Khan.  
Sir Akbar Hydari.

Sir Mirza M. Ismail.  
Sir Manubhai N. Mehta.  
Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Mr. A. H. Ghuznavi.  
Lt.-Col. Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.  
Begum Shah Nawaz.

Sir A. P. Patro.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Sir N. N. Sircar.  
Sir Purshótamdas Thakurdas.  
Mr. Zafrulla Khan.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., SIR FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

The following statement was made by the Marquess of Linlithgow, Chairman of the Committee:—

It may be to the convenience of the Indian Delegates that I should say a word at this stage upon the matter of

our arrangements for the autumn. First of all, I should like to make it quite clear that the invitation extended to the Delegates by the Joint Select Committee to attend and confer with the Committee implies an invitation to the Delegates to return in October and to continue to give to the Committee the benefit of consultation with them until such time as the Committee may reach that stage in its deliberations which will require that it should sit alone.

I have been asked by several of my friends of the Indian Delegation to provide them with a programme of our work in the autumn. They will appreciate my difficulty in attempting any very exact estimate of the time required for the bearing of the remainder of the Secretary of State's evidence and of the evidence of such other witnesses as may be called. Again, I find considerable difficulty in estimating the time likely to be occupied by any consultations between the Committee and the Indian Delegates which may take place at the conclusion of the evidence.

In this connection, it does appear to me that the nature of our proceedings since the Secretary of State went into the witness's chair has an important bearing upon the question of the amount of time likely to be required for these final discussions. The examination of the Secretary of State, as far as it has proceeded, has not only made plain to us all what is in the mind of the Government and of Sir Samuel Hoare; it has also, in great degree, enabled the Committee and the Delegates both to ascertain each other's views and also in large measure to understand the arguments which inform these views.

Indeed, if I may say so, and remembering always that in the nature of the case, the Joint Select Committee will not arrive at any formal decisions while in consultation with the Indian Delegation, it does appear to me that by his action in giving evidence before the Committee, the Secretary of State has brought the Delegates into much closer touch and understanding with the Joint Committee than could have been achieved by any other means. With this in mind, it does at this stage appear to me that no great amount of time need be consumed by any discussions that will be required after the list of witnesses is exhausted, and

that the examination of the Secretary of State, when that is complete, will to a large extent have effected those purposes which it was sought to attain, and which we all had in mind when we contemplated the discussions that are to take place after the evidence.

Certain of the Indian Delegates will not, I understand, find it possible either to remain in this country or to return to it in the autumn. Speaking for the Committee, I may be allowed to say that we shall regret their absence, but understand their difficulties.

I can readily appreciate the great inconvenience to the Delegates which must result if I leave them in complete uncertainty as to how long their presence with us will be necessary in the autumn. I have explained to them my difficulty in constructing any exact time-table for the autumn. When I have had time to make a complete review of the position, I may find myself able to attempt an estimate, but such estimate is bound to be subject to the obvious uncertainties of the type of work upon which this Committee is engaged.

If I feel that I have succeeded in putting together anything of value, I shall at once take steps to communicate it to the Indian Delegates. In this connection I should welcome an early indication from the Delegates as to whether on the whole they would like me, after full consideration to fix and announce as soon as possible, and to fix finally and irrevocably, a date upon which, whatever then may be the state of our business, the period of consultation between this Committee and the Indian Delegates will cease and be concluded, and so therefore the date upon which Delegates will be free to return to India, and upon which they may rely absolutely in making their plans and engagements. If this course is on the whole that which the Indian Delegates prefer that I should take, I am prepared, subject to the approval of the Joint Select Committee, to pursue it and to do my best, taking all things into consideration, to decide upon a date which should in my judgment provide them with every reasonable prospect of completing the process of consultation with the Committee. I think there is this added advantage in the course I am considering, that it would altogether

preclude that which I for one would wish to avoid, namely the risk of a gradual and progressive wastage of the Delegation which might seriously prejudice its representative character. I hope I may have communicated to me as soon as possible the view of the Delegation upon the matter.

Marquess of *Salisbury*.] I do not know whether my colleagues of the Joint Committee and the Indian Delegation will allow me to say a word to the Secretary of State. I do not know that I am qualified in any sense to voice the opinion of the Committee, but as I have been perhaps rather persistent in the questions which I have put to the Secretary of State, and inasmuch as he has always replied to me with the greatest thoroughness, and I feel extremely grateful to him, I should like to say on behalf of the Committee and on behalf of the Delegation, how very grateful we are to you, Secretary of State, for the attention which you have given to our questions in the witness chair. May I say that I think we have all admired very greatly not only your consideration but also the intellectual achievement of dealing with these very intricate questions on all sorts of subjects and dealing with them so fully as you have done? I hope I shall be allowed to say how personally very grateful I am. That is a small matter, but I believe the Committee and the Delegation as a whole are equally grateful.

Sir *Austen Chamberlain*.] May I, as a senior Member of the House of Commons, and, I feel sure, speaking their sentiments, associate myself with what the noble Lord has just said? I think we owe a very great debt of gratitude to the Secretary of State for the assistance which he has given to us by appearing as a witness before us. We have all admired the amplitude of his knowledge and the candour of his answers, and, if I may add one word, the good temper which he has shown throughout what must have been, in this room and in this weather, a most trying ordeal.

Major *C. R. Attlee*.] May I add a word on behalf of the Secretary of State's political opponents in the House of Commons, to say I fully agree with what Sir Austen had said on behalf of the Members of the House of Commons?

I would like to associate the Opposition with those sentiments.

Marquess of *Reading*.] May I say one word to associate myself also with what has been said by Lord Salisbury and Sir Austen Chamberlain? I am quite sure that all of us who have sat here and who have had very considerable experience amongst us of public affairs join in the tribute of high admiration that has been paid to the Secretary of State, not only for his work, but for his imperturbability, for his invariable courtesy, and for his persistent attempts to meet every possible view that has been suggested.

Mr. *M. R. Jayaker*.] May I say a few words on behalf of myself and a few of us? I associate myself with the remarks made by Lord Salisbury and Sir Austen Chamberlain, Major Attlee and Lord Reading. I shall only venture to express one hope, my Lord, because I am not aware how his evidence is being reported in India. If it is being properly reported I have a hope that in India there will be considerable satisfaction felt with the way in which the Secretary of State has acquitted himself. I have no doubt, my Lord, that many of us feel very satisfied with the way in which he has given his answers, especially the resources which he has displayed, the intellectual grasp of the entire scheme of the White Paper, and, although some of us are anxious to go further and to secure improvements in the White Paper, we realise that the fate of the White Paper is entirely safe in the hands of the Secretary of State. I would not like to say anything more, but I do associate myself with all that has been said by previous speakers on this point.

Sir *Hari Singh Gour*.] I wish to associate myself wholly and entirely with what has fallen from the lips of the previous speakers. I have been particularly struck by the plain and straightforward statements which the Secretary of State has made in his very long examination before the Select Committee and the Indian Delegation, and I echo the hope that if his evidence, or an abstract of his evidence, is made public in India, it will create a very favourable impression in my country as to the future of the Indian Constitution.

There has been a great deal of misunderstanding in India as to the nature and scope of the White Paper, but many of the doubts which people in India raise will greatly be allayed if the statement, either in whole or in a summary thereof, is published in India.

*Sir Akbar Hydari.*] On behalf of the Indian States, we also beg to voice most sincerely our feelings of appreciation and thankfulness to the Secretary of State for the way in which he has shown his special appreciation of the problem of the Indian States and the desire which he has shown in meeting them, and the great courtesy with which he has dealt with our questions, which might have been sometimes inconvenient to him.

*Mr. Zafrulla Khan.*] My Lord Chairman, may we on this side assure the Secretary of State how sincerely we endorse every word that has fallen from Lord Salisbury, Sir Austen Chamberlain and Lord Reading, and how deeply and highly we appreciate the spirit which prompted the Secretary of State to go into the witness box to assist in such a material way the deliberations of the Committee and to assist the Delegates in coming to a closer grip with the questions with which the Committee and the Delegates have to deal at this stage.

*Nawab Sir Liaquat Hayat-Khan.*] My Lord Chairman, may I say one word? Sir Akbar Hydari has already given expression to our feelings on behalf of the States, but I feel it is my duty, on behalf of the Chamber of Princes, to express our own sense of deep gratitude to the Secretary of State for the assistance that we have particularly derived from his going into the witness box. I am very sure in my own mind that their Highnesses of the Chamber of Princes will very greatly appreciate the assistance that we have thus received, and I should be grateful if this goes on record, because I have no doubt that their Highnesses would expect me to give expression to that feeling here.

*Reply by Sir Samuel Hoare.*] My Lord Chairman, I am really overwhelmed with all the kind things that have been said about me, and all I can say is that I am extremely grateful to every Member of the Committee and to every Delegate for having given me the help that they have given me during my examina-

tion. If my examination has so far succeeded it has been greatly due to the general co-operation that I have received both from my British and my Indian colleagues. My Lord Chairman, I am very grateful for every word that has been so kindly said this morning.

*Chairman.*

8401. Secretary of State, I understand that you desire to make a statement?— Yes. The Committee, my Lord Chairman, will remember that a number of questions were asked yesterday afternoon about the meaning of the word “prescribed” and the word “prescription” in paragraphs 139, 141 and 144. There seemed to be an idea in certain quarters of the Committee that what was meant was a continuing control and intervention by the British Parliament through Orders in Council in taxation questions in India. What I am going to say now I think will make it quite clear that that is in no way the intention of the proposals in the White Paper. Our intention put into a single sentence is that either in the Act, or in the Orders in Council immediately following the Act, we prescribe certain conditions for the distribution of revenue, and, having made that prescription, that prescription is final. The actual carrying into effect of the terms set out in the prescription then becomes a more or less automatic affair. Having made that introductory observation, I will describe the position in somewhat greater detail. “Prescribed” within the meaning of Proposal 145 is used in Proposals 139, 141 and 144. These proposals will be dealt with in turn. “Prescribed” is used in Proposal 139 in three places; the first in line 1 is the prescribed percentage of taxes on income (other than corporation tax) which will be assigned (subject to certain conditions) to the Governors’ Provinces. This percentage will be prescribed by Order in Council once and for all. The only reason for not putting the percentage into the Constitution Act itself is that it may be difficult to fix until after the financial enquiry, the results of which may not be known until after the Act is passed, though not yet put into operation. It is intended to make it clear in the Act itself that this percentage having been fixed by Order in Council can-

not be altered by subsequent Order in Council. If alteration were needed it would have to be by an amendment of the constitution Act itself. "Prescribed" is used again in the seventh line of Proposal 139. No definite proposals have yet been formulated by the Government as to the best method of distribution among the Provinces. It is a technical question of some difficulty. One suggestion is made in Lord Eustace Percy's Report, paragraphs 74 and 75, though that particular suggestion would in any case need some modification to fit in with the White Paper scheme. Here again it is intended that once the basis is prescribed by Order in Council it should be unalterable. At the same time, although permanent principles might be laid down in the Order in Council, the working of these principles might necessitate periodical revision of percentages. It is, however, contemplated that this process would be of a more or less, automatic kind and might perhaps be delegated under the Order in Council to some authority in India such as the Auditor-General on the lines suggested in paragraph 75 of Lord Eustace Percy's Report.

"Prescribed" is used again in line 17 of Proposal 139, for the sum which is initially to be retained by the Federal Government out of the Provincial share of income tax. Here again this sum is intended to be fixed by Order in Council once and for all. Proposal 139 gives power to the Governor-General to hold up any reduction in this amount, but this is quite separate from the initial fixing of the sum.

"Prescribed" is used again in line 8 of Proposal 141. The difficulty here is that the States will, under special circumstances, contribute to a surcharge on something which does not exist in the States. It is unlikely that it will be possible to take as the basis of their share any assessment of what the surcharge would yield if it was actually in operation in the States. No final proposal has yet been made as to the best basis to be used. It might, for example, be a contribution on the basis of population, but it is unlikely that this would be a very suitable test. A more suitable suggestion is that the contribution should be in proportion to the revenues of each State and of

British India. Possibly to prevent constant investigation into the revenues of the States, percentages might be fixed which would hold good for a term of years as representing approximately revenue proportion. In such a case once the principle had been laid down power to fix the percentages might again be delegated to, say, the Auditor-General in India. There is no essential reason why the principle to be adopted for the basis should be fixed by Order in Council rather than in the Constitution Act itself. This question might perhaps be discussed in the autumn by the Committee and Delegates with a view to embodying a definite plan in the Act itself.

"Prescribed" is also used in Proposal 144 of the White Paper in connection with the subventions to Governors' Provinces. Here again the Order in Council machinery is suggested, since it will not be possible to fix the amounts and periods of subventions until after the result of the Financial enquiry, of which the result may not be known until after the passing of the Act. It is, however, the intention that, if practicable, these subventions should either be fixed in amount in perpetuity or be terminable at the end of a stated period of years (for instance, in the case of Sind). It is undesirable that these amounts should be open to review and that the Provinces should be in a position to press for an amendment of the Order in Council to give them further amounts. It is difficult, however, to give a final view as to whether the amounts and periods of the subventions can be fixed once and for all without power to alter, until after the report of the Financial enquiry is available.

My Lord Chairman, I think that Members of the Committee will find when they come to read this statement in greater detail, that I have dealt with every case in which the word "prescribed" or "presumption" is mentioned in the White Paper.

Lord Hardinge of Penshurst.

8402. Will that be circulated?—Yes, it will be on the Notes.

Sir Akbar Hydari.

8403. There is one point where you said with regard to "prescribed", in the

second of those series that the alteration would have to be effected by a change in the Constitution Act itself?—Yes.

8404. That will affect the Indian States, and in the change in the Constitution Act, will there be any opportunity for the Indian States to be consulted? The position will be this: That the Indian States in determining their decision will have seen as to what their financial responsibilities are, and they will have the feeling that this has now been determined for all time, but if there can be a change by a change in the Constitution Act, then they will feel a certain amount of uncertainty in this regard?—I think Sir Akbar will see when he reads the statement that we do not run the risk that he has just suggested. Obviously, if a change were subsequently made that altered the basis upon which the States had acceded, the States would have to be consulted and a new bargain would have to be made.

Sir Akbar Hydari.] Thank you.

Major Attlee.

8405. Secretary of State, I want to put to you one or two points, first of all, in regard to India's financial position. Would it not be true to say that though absolutely her position may be difficult, relatively to the position of most countries, she is in an extremely sound financial position?—Certainly.

8406. The second point is this: Her debt is relatively extremely small; it amounts to £909,000,000 outstanding, of which £726,000,000 are secured on assets which are remunerative, leaving outstanding only £183,000,000 not so secured. I have taken these figures from Sir Malcolm Hayley's paper. That is a very exceptional state of affairs?—I should agree.

8407. Thirdly. I understand that of £100,000,000 which was put up by India during the War, she has paid off £84,000,000 of that?—That is so.

8408. Is that not an entirely unique achievement for any State that was in the War?—I should say that it was, and I wish that other people would follow India's example.

Marquess of Reading.

8409. May I ask one question on that, only trying to clear it? That £100,000,000 was a gift, was it not?—It was a gift, yes.

8410. It stands in a different category from anything else. My recollection of it was that it was a voluntary act by India as a gift, and certainly no other country has done that?—Yes. I ought to correct my answer in view of what Lord Reading has just said. It was a gift.

Sir Austen Chamberlain.] May I say I was Secretary of State at the time it was made. It was a gift; but when we are mentioning that, I think we ought also to recall the free gifts made by many of the Indian States.

Major Attlee.

8411. Yes. I mentioned that as a debt, because the money was raised on loan and paid off, but you might take that as a free gift which had been paid off during this very difficult post-War period. Now at the present time India is paying a sum of 5.17 millions in reduction of debt. There are a great many countries, including our own, which have suspended debt repayments. The point I want to put to you is this, that Indian financial advisers have followed a course of almost excessive financial probity?—They have certainly followed a course of great financial probity, and I would add, with great success. I think the success is shown by the stability of Indian credit, as compared with the credit of many other tracts of the world that might be compared with India.

8412. There are many financial authorities, are there not, who suggest that in a period of great financial stringency such as the present, it is quite a reasonable proposition to suspend debt repayments. India has not done that?—I have observed arguments to that effect.

8413. And examples?—And examples to that effect.

8414. The point of those questions is that in considering the financial position vis-a-vis reforms, one must have some sense of relativity, both with regard to the general financial position of the world, and also with regard to the times



through which the world is passing?—Yes, certainly.

8415. The next point I make would be that it would be true to say that the broad features of the Indian situation are largely dependent on world circumstances?—That is so. I assume Major Attlee has in mind world prices chiefly, when he asks that question.

8416. World prices. Therefore, the financial stringency due to world conditions will apply whether reforms are introduced, or not?—Yes.

8417. The difference under a reformed Constitution or unreformed Constitution is of comparatively small amount, as has been brought out—the additional cost of the setting up of new reforms under the Constitution?—Yes.

8418. The next point I ask would be with regard to the Reserve Bank. I do not want to deal with any technicalities, but, given the present world conditions, are not those prerequisites for the establishment of a Reserve Bank which, in effect, become prerequisites for starting reforms, very stringent, and do they not really depend on world causes more than anything that India can do?—The two are bound up together; there is no doubt about that. Without going into detail about the Reserve Bank, I would say to Major Attlee that it would, in my view, be a great mistake to start a Reserve Bank in such conditions that would undermine its credit and stability from the beginning. I would prefer to reserve my more detailed views about the Reserve Bank until we have got the Report of the Reserve Bank Committee.

Major Attlee.] I only wanted to ask you on general Constitutional points.

*Marquess of Salisbury.*

8419. I probably ought to know this, but when does the Secretary of State expect the Report of the Reserve Bank Committee?—I understand the Committee will probably finish its work this week, and I should hope then, if this Committee so desired it, to circulate the Report at once. Perhaps I might think that point over; anyhow, to circulate it in plenty of time to have a discussion, say, in the early autumn. I do not think we can look to discussing it next week without present programme.

*Marquess of Salisbury.*

8420. Only in the holiday most of us, will not want to read the subject at all?—Certainly.

*Chairman.*

8421. When you say circulate, do you include publication?—I think I would like to think that point over.

*Major Attlee.*

8422. The Reserve Bank is to be free from political control?—Yes.

8423. Does that mean it is going to be free, not only from any control by representative bodies, but also free from any Governmental control by a Finance Minister?—I would suggest to Major Attlee that that is just one of the kind of questions that the Committee are considering now. I could give him an answer, but I prefer to give my answer when the Committee has issued its Report. I can satisfy him to-day to this extent, to say that it is the view I think of everyone that the Reserve Bank should be free of political control.

8424. The Secretary of State will be aware that there are several banks entirely free of any control by Government that have come in for criticism?—I think the other kind of Central Bank has come in for much more criticism.

8425. I leave that point. The next point I ask you is one which has been touched on in your reply to-day: On the question of allocation between the Centre and the Provinces, one realises that you have only got one fund for the Centre and the Provinces to draw upon, that is the taxable capacity of the people of India, and the allocation of Revenues between the Centre and the Provinces necessarily depends, to some extent, on the subjects allocated to it. The point I want to ask is this: Has the Secretary of State considered at all the possibility of using subventions from the Centre to the Provinces as a means of insisting on certain standards of administration?—I have never been able to see myself how a plan of that kind can work in with a Federation, the basis of which is, in the first place, Autonomous Provinces, and, in the second

place, Sovereign States. I think Major Attlee will find, if he investigates further the possibility that he has suggested, he will come up against tremendous opposition, both from the Autonomous Provinces, and from the Indian States. That being so, and the fact being also that I am anxious that Provincial Autonomy should be effective, I have never been able myself to see how a system of grants-in-aid could apply.

8426. May I suggest this to you—that while it is necessary that Provincial Autonomy should be effective, it is also necessary that the Federation should be an effective instrument of Government. In other Federations it has been found that there is a difficulty in carrying out Federal laws through a failure of the Provincial instrument. I think that was so in the United States of America. The concrete suggestion I make is, has it ever been suggested that it might be possible by a grant-in-aid to the Provinces not only to effect some equalisation of costs between them, but also to ensure through inspection certain standards, say, of efficiency in the Police Force; that, ultimately, by this means the States might also realise the advantage of the plan, and, therefore, you might have a position in which by subventions from the Centre the Instrument of Law and Order was kept effective in all parts of the Federation?—I have considered proposals of that kind. Proposals, for instance, affecting Law and Order; proposals affecting social legislation. My difficulty is to see how it will work with Provincial Autonomy. I do not believe it will; but, obviously, let the Committee and the Delegates give their minds to Major Attlee's suggestion. I myself see every kind of practical difficulty in the way of a proposal of that kind. I think the Provinces and the States will both resent the kind of inspection that would be incidental to it. I do not see again where the money is coming from, or how the actual percentage of grants-in-aid is going to be fixed without the most endless trouble with the Provinces and the States. I put these practical difficulties to Major Attlee, and I ask him to think about them. I will think also about his suggestion, but, as at present advised, I do not see any way of

surmounting the difficulties I have just enumerated.

8427. May I suggest three points on that? First of all, where the money is coming from. Agreed that the Police have to be paid; the question as to whether they are paid entirely by the Province or by the Provinces from resources part of which are given wholly to the Provinces, part of which are subventions to the Centre, is merely a matter of book entry, the question of the assignment of certain Revenues to one or the other. The second point I ask is whether it is not possible to make a mistake over Provincial Autonomy, just as I would suggest a mistake was made in local self-government in India, when the idea that Provincial autonomy or local self-government meant an entire relaxation of Central control. I think the result has been in many Provinces of local self-government that you have very large subventions from the Centre and no effective control, such as we have in this country, by audit and inspection over the operations of the local authorities. I merely put that to the Secretary of State as a consideration. Thirdly, with regard to the difficulties of allocation, in this country, as a matter of fact, we have a subvention from the Centre to local Police Forces which is based upon 50 per cent. of the cost of pay and clothing. That is a fairly simple method; and we have many other very different ways of grants-in-aid which have been explored. It is not insuperable?—Let, however, Major Attlee work his plan out in rather further detail; I do not say now, but let him think about it. I think he will find that a proposal of that kind would almost certainly bring the two Legislatures into conflict, namely, the Provincial Legislature, to which would have been transferred the activities described as Law and Order, and the Federal Legislature. I think, in addition to that, if his proposal was to be effective, it would mean taking the case that he has just mentioned, taking the case of Law and Order—

8428. I have not said Law and Order, if I may say so; it was only the specific point of the Police Force itself?—Taking the case of the Police, I think it would mean almost inevitably a Ministry of Law and Order at the Federal Centre, with

its Inspectors, and so on; and I think Major Attlee will find, when we hear the views of a good many of the Indian Delegates, that there will be a very strong opposition to a proposal of that kind. (Mr. Zafrulla Khan.) May I, through you, my Lord Chairman, request Major Attlee, whether now or in a written note, to give us a clearer idea of what exactly he means. Would he mean, for instance, that the Centre should give subventions to such Provinces as are willing to accept them, on the basis of a reciprocal arrangement of the kind he suggests, or would it be compulsory upon each Province to accept a subvention and agree to a certain amount of control. If the former, the arrangement would not be uniform, and his object would not be achieved in some of the Provinces. If the latter, why a subvention at all? Why not say, you want to impose certain restrictions from the Centre in any case? What exactly are the implications of his scheme and where would he bring a subvention from? At present the Provincial Revenues will provide the cost of all these Services. Does he mean you should take away a little from Provincial resources and give it back to the Provinces by means of a subvention, and say, "Because you have this subvention, we shall impose upon you this control"?

Major Attlee.

8429. I will not go into that in detail now. If Mr. Zafrulla Khan would look at the system in vogue in this country with regard to local Police Forces, I think he will see that it is not quite so difficult as he thinks. The next point I would ask would be with regard to payments to deficit areas. Take, for instance, Bengal. Bengal is one of the financially poorest Governments in India?—Yes.

8430. But it is also really a wealthy Province. It is due, is it not, mainly to the fact of the permanent settlement that produces Land Revenue?—A good many people would say it was due to the financial settlement that was made after the Government of India Act as well.

8431. You mean the Meston Settlement?—Yes.

Marquess of Reading.

8432. I do not quite follow. Under the Meston Settlement was not eventually a new arrangement made with Bengal?—My recollection was that there were certainly arrangements made over one or two years, but my impression was that it was changed with Bengal?—(Sir Malcolm Hailey.) Under the Meston Settlement Provinces generally in the aggregate received additional revenues to the extent of about six crores of rupees. As that left the Centre in deficit, contributions were levied from various Provinces, except Bihar and Orissa. After a time it was found that Bengal was hard pressed to meet its expenditure and in the case of Bengal, at an early stage, the contributions were remitted.

8433. That is what I had in mind?—And it was only at a much later stage that they were remitted in the case of the rest of the Provinces in 1927.

Marquess of Reading.] That is what I had in mind, that Bengal's contribution was remitted.

Sir N. N. Sircar.

8434. May I ask if the figures are correct: namely, what was remitted to Bengal was 60 lakhs of rupees?—Fifty-nine.

8435. And what has been taken from Bengal (I need not go into details) is the whole jute export duty, four crores, and the whole of the Income-Tax, a large amount of which was realized in Bengal?—I do not think the Committee would thank me if I were to try and dig up all the arguments about the Meston Settlement here.

Sir Purshotamdas Thakurdas.] May I, apropos of what Sir Nripendra Sircar said just now, inquire if Sir Malcolm Hailey would be able to enlighten the Committee whether Bengal shows the largest amount of Income-Tax as stated by Sir Nripendra Sircar, in view of this, that the Income-Tax is collected in the Bengal circle of the Imperial Bank which includes Bengal proper, the United Provinces, and the Punjab? That is the point about it.

Major C. R. Attlee.

8436. I think that has gone off on a different point. My point was that, broadly speaking, you could say that, apart from the exceptional position of Calcutta and so forth, the Land Revenue system under the Permanent Settlement has meant that the Government of Bengal is able to get a much smaller revenue from the land than other Provinces which are comparable with her in wealth?—Yes; that is undoubtedly one of the causes of the inelasticity of the revenues of Bengal. There are other contributory causes to the present position of Bengal; but the Permanent Settlement is undoubtedly one of the factors which has kept Bengal from raising its revenue, just as it has kept Bihar and Orissa and part of Madras and part of the United Provinces from doing so.

8437. The point I want to put is that, in any subvention, is it just to the other Provinces of India that, because the method of internal distribution of wealth in that Province is one by which the Government is able to get a very small revenue, the amount should be made up by those other Provinces?—I think in suggesting a subvention to Bengal, the Government have had less in view any ideal distribution than the fact that very clearly Bengal is now working to a very low standard of administration. That is illustrated by the fact that it is only able at present to spend two rupees, five annas per head of its population. That compares, for instance, with Bombay, with eight rupees; Madras, with four rupees; the Punjab, with five rupees; and so forth. It was just a mere recognition of the fact that the standard of administration is necessarily being kept very low by available resources and that, owing to exceptional circumstances in Bengal, such as necessarily high expenditure on the police, that has almost inevitably involved a deficit.

Dr. B. R. Ambedkar.

8138. I want to suggest that the standard of administration in Bengal is low because Bengal has not been able to raise sufficient revenue by reason of the Permanent Settlement. It is another way of stating the same thing?—It is one of

the reasons, but we have to accept the fact that the Permanent Settlement is there.

Dr. B. R. Ambedkar.] That is so.

Major C. R. Attlee.

8429. Have you considered in the question of grants to the poorer Provinces the position of the backward tracts? It is more or less an accident, is it not, say, that Chota Nagpur should be tied up with Bihar? Is there any reason why the people of Bihar should have to find the money due to the fact that Chota Nagpur is a backward area or that the people in the valleys of Assam should have to find it for the hill parts of Assam? Should not those backward areas be a charge to some extent on the revenues of India as a whole, rather than on those Provinces which administrative or geographical accident has united to them?—(Sir Samuel Hoare.) I agree that they should. In the case of Assam—perhaps the most conspicuous case—the expenditure on the backward tracts would have to be taken into account when the amount of the assistance to Assam was assessed.

Sir Austen Chamberlain.] Will you ask whether there is a sum specifically attributed to the backward tracts?

Major C. R. Attlee.

8440. That is the point I am going to ask. My point is this: If that were done would those grants be dependant on adequate expenditure by the Government being made in those backward areas?—Yes, certainly.

8441. I have only two more points. One is the question of Provincial borrowings, which is dealt with in Section 149 on page 76 of the White Paper?—Yes.

8442. The Government of a Governor's Province have power to borrow, and so forth. Have you considered at all the Proposal made in the Simon Commission Report for a provincial loan fund, so that the demands for loans should be brought together with the Government of India's requirements and those of the Provinces into some kind of standing Loan Fund?—Yes, and I think it might be a very good plan. I would not like to

tie myself down to the plan as an exclusive plan. One has to remember that the Provinces will be autonomous, but my own view would be that if they are going to raise money cheaply they will have to have some common action of that kind, otherwise they are likely to pay much higher rates of interest for their loans. I think they must study the market, and there must be some sort of relation between the loan policy of one province and another, but it will have to be a voluntary arrangement, as I see it.

8443. There again I would ask you not to make autonomous independence. Provincial autonomy is only within the Federation, and, therefore, the Federation might impose such conditions as would make for the good of the whole. The last point is with regard to the expenditure on Defence. You are aware that the Simon Commission went at considerable length into this question of Defence?—Yes.

8444. And suggested, quite apart from questions of capitation grants, that part of the burden that India bears is due to the fact of its possessing the one exposed land frontier in the British Empire. Have you considered at all the possibility of any part of that burden being taken over as an Imperial burden?—It is a question, of course, that has constantly been discussed between India and Great Britain for many years, and it is one of the questions that will emerge out of the capitation tribunal decision. I would prefer, if Major Attlee would allow me to do so, to wait until the autumn when I should hope to be able to make a fuller statement of the results of the Capitation Tribunal that I can to-day. When Major Attlee reminds me of the Simon Commission recommendations about Defence, I think I would like to add this observation: The basis of the proposals of the Statutory Commission were really to segregate Defence from Indian Government; to make it exclusively an Imperial obligation. I am not now going into the financial reactions of a proposal of that kind. We went very fully into the proposal, and the more we went into it the more we came to the view that administratively it would be very difficult, and, politically, it would be unwise to segregate this great Department from the rest

of Indian Government; to make it a watertight Imperial concern. I can say without breach of confidence that I think the people who criticised the proposal most strongly, and most effectively, were the soldiers themselves. The soldiers themselves took the view that it would be a mistake to isolate Defence from the Railway administration, and from all the other activities in India, and the effect of it would be to make Indians look with even greater suspicion at the Defence Department than they may do at the present time.

8445. I do not want to raise the administrative point but merely the financial point as related to the Constitution?—Yes.

Major Attlee.] Because my point would be that this financial obligation is on India, and yet the foreign policy on which Defence depends is a Reserved subject, and my suggestion would be that as long as that was a Reserved subject India had a claim to some relief on a question of defending itself. Complete autonomy might have the obligation of Defence, and, in the meantime, the obligation should be ours. I do not suggest it is not shared to some extent by the Navy now, but, as regards the rest of the Empire, I suggest that India, considering she does not control the policy, does have a very heavy burden, and the only chance of lightening the burden on the Central Government, and of their getting more money, seems to be in some reduction of the Defence charges.

Sir Austen Chamberlain.] I hope Major Attlee will not forget that this country has a very heavy reserve liability in respect of Defence.

Major Attlee.

8446. Other parts of the Empire pay less?—Major Attlee is raising a very big and a very controversial issue upon which there has been a discussion for generations. What I can tell him, however, is that this was one of the issues referred to the Capitation Tribunal composed, as he will remember, of impartial British and Indian Judges, and I should hope to be able to make an announcement on the subject when we resume our discussions in the autumn.

Major Attlee.] Thank you.

Marquess of Reading.

8447. In the reference you made to the Capitulation Tribunal, and to the matters there being considered, was the question raised before them definitely, apart from the one just now mentioned, of Imperial contributions to India, in relation to Defence?—Yes.

8448. I do not want to ask any more if you tell me it was?—Yes, it was one of their Terms of Reference.

Sir Akbar Hydari.

8449. My question relates to the question of Railway accounts. A distinction has been drawn between the purpose for the Railway Depreciation Fund and the appropriation for reduction or avoidance of debt. I understand that the debt originally raised from the market in respect of railways would have disappeared by the provision for the avoidance of debt and be represented by debt from the Railways to the Central Government. The distinction between the purpose of the Railway Depreciation Fund and the appropriation for reduction of debt has been explained and the explanation leads to the following conclusion: That the debt originally raised from the market in respect of railways would, by such an appropriation for the avoidance of debt, have disappeared, and this debt would be represented by a debt from the railways to the Central Government. Looking to Sir Malcolm Hailey's Memorandum on the first page I find that on the receipts side the item is *nil* under "Railways," and on the expenditure side there is an item of about 6.89 crores under "Reduction of debt." I want to know whether this item "Nil" on the Receipt side is after making due provision for depreciation?—(Sir Malcolm Hailey.) The figure I have given on the first page does represent the figure after making due allowance for the reduction of debt. It is a very technical question, but that is a correct answer to that particular point.

8450. On the other hand, the figure which you have put down for reduction of debt on the expenditure side, 6.89,

includes also, I suppose, whatever is required for the payment or reduction of debt on account of capital expenditure in respect of Railways?—What I have given here, on page 1, is your regular Revenue Budget, and the item put down for the reduction of debt is equivalent to Revenue expenditure—that is, general Revenue expenditure. Our Railway Budget is separate, and the mere fact that there are no profits from the Railways means to say that taking all these heads together, namely, what is put apart for depreciation and appropriation towards payment of debt, there has not been a sufficient surplus of income to justify any payments to general Revenues. If Sir Akbar would care, I could, of course, give him a fuller statement which would take account of the various technicalities involved in the Revenue position; they are very technical indeed, and, perhaps, it would be much more satisfactory, because these matters want stating very accurately indeed, if I gave him that written statement in reply to his question.

Sir Akbar Hydari.] I do not want to enter into any technicalities. I simply want to invite your attention to the fact that in the Federal forecast of the Percy Committee, there was an entry of 5 crores under Railways, and what I want to submit to you is whether it is not a fact that if you make on the expenditure side full provision for the reduction or avoidance of debt, then on the receipts side you must at least give credit to general Revenues for the interest on the amount of the debt that is represented by the capital spent on Railways.

Sir Hari Singh Gour.

8451. Perhaps Sir Malcolm Hailey would answer that question by giving Sir Akbar Hydari the history of the quinquennial agreement which the Legislative Assembly entered into with the Railway authorities. That would immediately clear up the whole position?—(Sir Samuel Hoare.) I should think, Sir Akbar, we would like to consider your question and we will send you a detailed answer. It is rather a technical question, and I should rather like to look into it.

Sir Akbar Hydari.

8452. Thank you. What I wanted to point out was that the position which emerges from Sir Malcolm Hailey's Memorandum should take account of the fact that there would probably be 5 crores more on the receipts side, if this question is settled in the way in which it should be settled?—(Sir Malcolm Hailey.) I am afraid I could not admit that now. The figure that was given in the Percy Report, of course, assumed an economic recovery which would give us net Railway receipts over and above Railway charges. That recovery has not so far taken place.

Lord Eustace Percy.

8453. For the purpose of the statement which is going to be drawn up, might I suggest that the real question is this: Whether in this Budget of 1933 to 1934 which appears in Sir Malcolm Hailey's Memorandum, it is not the fact that the Railways, while earning depreciation on their fixed capital, are not able to make any contribution towards the amortisation of the debt borrowed by the Government of India on their behalf, and that the whole of that amortisation has to be made out of General Revenue and it comes into the figure of 6.89?—In other words, they are not able to make any such contribution to general Revenues, as would assist the general Revenue position and thereby ease the charge which we have to make for reduction of debt.

Sir Akbar Hydari.

8454. No, it is not only that, but it is also this, that if you make a provision on the one side for depreciation, and keep your Railways in an absolutely up-to-date condition, then is it fair that, on the other hand, general Revenues should be made to pay again for the amortisation of the debt on account of Railways—in other words, that ultimately there should be a continuous drain upon the general Revenues of India on the receipt side; that, ultimately you have got all your Railways for nothing?—That is an alternative method of dealing with Railway debt. There have been two methods considered. I, of course, have given the figures here

as representing the results of the present method. It would be possible, of course, to make the Railways responsible entirely for their own debt. That is an alternative method of dealing with it; but there again, there are very many technical issues involved, particularly of accountancy, and if Sir Akbar would care to have them dealt with in a separate Note, we could, of course do so.

8455. I was only referring to the question of principle—whether simultaneously, you should make full provision for the depreciation of a property so as to keep it absolutely up-to-date, including the amount for obsolescence, and, on the other hand, and simultaneously put on on the expenditure side an amount to wipe out the debt which is represented by that. That was my question of principle that I wanted you to consider?—It comes back really very much in general terms to the point to which the Secretary of State referred in answer to Major Attlee as to whether we are, or are not, making too large a provision for reduction of debt on the whole.

8456. Of course, he asked on account of the present conditions?—Yes.

Sir Akbar Hydari.] I am asking from the very nature of the case whether that is really right.

Sir Purshotamdas Thakurdas.] May I say one word about this? This same question was discussed between Sir Akbar Hydari and representatives of the States at the India Office, and myself and Dr. Shafa'at Ahmad Khan as representing the British-India part at the Federal Finance Sub-Committee last December. This is a question on which there is substantial difference of opinion, if I may say so.

Dr. Shafa'at Ahmad Khan.] Yes.

Sir Purshotamdas Thakurdas.] I sent to Sir Findlater Stewart, who presided over that informal conversation, a copy of the letter, and I do not think that it will be conducive to throwing more light on the subject if it is to be discussed in this manner. It is a highly technical question and, on behalf of British-India, we hold the view that the provision which was being made, if it errs at all,

errs on the side of too much being provided and not on the side of too little being provided.

Sir Akbar Hydari.] Then you are on my side ?

Sir Purshotamdas Thakurdas.] No, I am not. You want more to be provided in addition to this 6.83 ?

Sir Akbar Hydari.] More should be provided, according to you.

Sir Purshotamdas Thakurdas.] I say too much is being provided. Your contention is that this is not adequate, and that 5 crores more should be added.

Sir Akbar Hydari.] No, my contention is quite different. I say that if you provide 5 crores for depreciation on the expenditure side, then you should not provide as much as 6.89 crores on the Revenue side.

Sir Purshotamdas Thakurdas.] I am afraid I did not follow that. Then there is no difference between us.

Lord Eustace Percy.] I quite agree with Sir Purshotamdas Thakurdas that it is no use trying to discuss it here. The only point is whether the provision for amortisation for the capital at charge in respect of the Railways should be made out of general Revenues or out of Railway Revenues. That is the only point.

Chairman.] I hope we may get back to the examination of the Secretary of State as soon as possible.

Witness.] We will look into it again for Sir Akbar, and we will send you and Sir Purshotamdas Thakurdas a fuller Note.

Sir Akbar Hydari.

8457. And whether it should be made at all ?—Yes.

Sir Manubhai N. Mehta.

8458. With regard to Finance, I may allude to the very question which Sir Akbar Hydari put by saying that at the recent meeting of the Railway Board sub-Committee Sir George Schuster explained the position, and, perhaps, Sir Malcolm Hailey may derive some assistance from Sir George Schuster as to how he explained the depreciation charges and the provision for the amortisation of the debt. I have no more questions on that point, but there is one other question I might ask. In the Federal Finance Committee's

Report of the Third Round Table Conference, it has been provided that whenever States during the first period of ten years were called upon to make any contributions, or rather, if the remission of tribute was suspended during the time on account of emergency, the Report says that such amount should be taken or should be adjusted against any contributions the States may be asked to pay as surcharges. The matter has been entirely omitted from the White Paper. May I request, if any reason may be given for this omission ?—(Sir Samuel Hoare.) I can assure Sir Manubhai Mehta that if the detail is omitted from the White Paper, it is only because the White Paper does not cover every detail. There is no intention of altering the arrangement that was then agreed.

Mr. Zafrulla Khan.

8459. My Lord, I have some questions to put to the Secretary of State on paragraph 61 of the Introduction at page 31 of the White Paper. Secretary of State, you informed the Committee, and, if I may say so with respect, I agree entirely with you in that matter, that tributes paid by some States at present are neither immoral nor wicked in their own selves, but that you find it would be anomalous under the kind of Constitution that we are framing that some units should continue to make contributions of that description to the Federation ?—Yes.

8460. And that, therefore, it has been found desirable to visualise their ultimate abolition ?—Yes.

8461. May I understand from this that any other kind of arrangement which would be equally inconsistent with the kind of Constitution that we are framing, would also be considered equally undesirable ?—I should like to know what any other kind of arrangement was before I gave an answer to that question.

8462. I shall put it to you. I understand the principle is that payments of that kind from some of the units to the Federation are extremely undesirable. Would it be desirable to impose upon the Federation payments in favour of some of the units upon similar considerations ?—I find a difficulty in answering that question until I see it in a more concrete form.



8463. Shall I proceed to put it in a more specific form?—Yes.

8464. Was there or was there not no *quid pro quo* for these tributes when they were agreed to be paid? Shall we start from that position?—I should say that there was, but I hope Mr. Davidson will correct my answers in a field upon which he is a particular expert. I would say that there was.

8465. Will that *quid pro quo* continue or not continue after the tributes have been abolished?—Yes.

8466. Without any return which was fixed under the treaties on the other side?—Except that we set the tributes and the immunities against each other.

8467. To that extent only, but where there are no immunities and there are only tributes which will be abolished?—Yes, I think it would be true to say that.

Sir *Mirza M. Ismail.*

8468. Not necessarily?—What does Sir Mirza say?

Sir *Mirza M. Ismail.*] Not necessarily, because the indirect taxation has increased. That would not necessarily be the case because when these tributes were levied the indirect taxes paid by the States to the Central Government were nothing like what they are to-day. The States are paying a much larger proportion of the share towards Imperial Defence or for Imperial purposes than they did when these tributes were imposed upon them. It is not in every case true to say that they received any return for the tributes that were imposed upon them. It is not always the case.

Mr. *Zafrulla Khan.*] I thought it was a case of treaty really, not so much a case of imposition.

Sir *Mirza M. Ismail.*] I do not know whether "treaty" is the right word to use, when the treaty is dictated almost in those circumstances. I do not say that there were no good grounds.

Mr. *J. C. C. Davidson.*] The short point, Secretary of State, is this, that at the time when the treaties were made the contribution was asked for in return for certain military guarantees. Since that time by indirect taxation the defence of India has been provided for in

part by payments by States subjects; in other words, the States have actually contributed to the general defence of India which was not the case when the tributes were first exacted.

Mr. *Zafrulla Khan.*

8469. Without pursuing that aspect of the matter any further, that was really introductory to what I was going to put to clear the ground: If that would be the case with regard to the tributes, what I am anxious particularly to draw attention to is the question of compensation for ceded territories. With regard to the ceded territories, it is true, generally, is it not, that the Davidson Committee found that at present there is no surplus which is being enjoyed by the Government of India out of these ceded districts—generally?—That was so, was it not, Mr. Davidson?

Mr. *J. C. C. Davidson.*] That is so.

Mr. *Zafrulla Khan.*] Apart from that question, if you remit tribute, you are forced to consider this question in this light also. I want to understand, if tributes are undesirable, although in themselves not being immoral or wrong or wicked, but being undesirable because it is not desirable that certain units should make payment to the Federation, how far is it desirable that the Federation should make payments to certain units for territories ceded by them under treaties made years ago?

Mr. *J. C. C. Davidson.*] If I might intervene, it is this: I think it would be found to be clearly set out in the Report of the Indian States Finance Committee, that the origin of contributions and ceded territories was the same, and in point of fact territory was ceded merely to ensure a contribution; in other words, that funds would be available to carry out military obligations which the East India Company and Government undertook. I refer to Chapter III, paragraphs 33 to 39, contributions and conclusion on pages 34 and 35; to Chapter IV, paragraphs 91 to 105, contributions and conclusions on pages 64 and 65; and to the concluding chapter, paragraphs 434 to 449. We came to this conclusion, that if tributes could find no place in the Federal Constitution, equally the only alternative would be to give back to the

States the territories which had been ceded by them which in that respect were the same as tributes, and that is a matter which I think was discussed at the Finance Sub-Committee of the Round Table Conference last year, and in paragraph 27 of the Report they say : "We therefore accept their view that States which in the past have ceded territory in return for protection are entitled, equally with the States now paying cash contributions, to some form of relief," and it goes on to say : "Most of us agree with the conclusion of the Davidson Committee that the net value of the territories at the time of cession constitutes the fairest basis for calculating the relief to be granted when such relief is desired by a State. This, however, assumes that retrocession of the territories in question, or failing retrocession an exchange of territories in favour of the States concerned, is not found to be a practicable alternative."

Sir Akbar Hydari.] May I ask, is it not a fact that with regard to ceded territories also the cession of these territories has enabled India to be what it is ; that if particular territories which were usually mostly those on the coast or the seaboard had not been ceded, then the Federal Government would not have been in possession of all the sources of revenue and would have had imposed upon it much more expenditure than what it has at present on account of the cession of these territories so that the *quid pro quo* on account of this cession continues to be operative.

Mr. Zafrulla Khan.

8470. Thank you very kindly. May I carry the matter one step further ? Assuming that some form of compensation is called for in that respect, I wish to understand this aspect of it : With regard to the tributes, we know that there is this cash payment being made and that you want to abolish it. With regard to these ceded territories, what is the contribution which these ceded territories are making over and above the ordinary expenses of their own administration and beneficent Departments, particularly towards the Defence of India, which might be regarded as the contribution of those particular

States to-day towards military expenditure ?—Here again I would invite an observation from Mr. Davidson. My own answer would be that the Government of India would say they are making nothing out of these ceded territories at all. The States, however, might say that if they administered them they might make something out of them. Which is right I do not know, but perhaps Mr. Davidson would add an observation to my answer.

Mr. J. C. C. Davidson.] The answer to that, Secretary of State, is this : Under modern conditions in British India Government is not run at a profit. I think the States have claimed (for instance, I think Baroda undoubtedly has claimed) that their administration is different from that of British India, but if their administration had been in force in those territories which had been ceded it might have been a less expensive form of government.

Rao Bahadur Sir Krishnama Chari.] May I also mention another circumstance which I mentioned at the Third Round Table Conference : that the territories ceded by Baroda were intended for the maintenance of a separate force of 5,000, but at the present moment only about 700 troops are maintained in Baroda, and the rest of the troops have been amalgamated with the Indian Army and to that extent these territories pay for a large portion of the Indian Army. All these details were discussed at the Third Round Table Conference before we agreed on that report, and I respectfully submit they should not be reopened again.

Mr. Zafrulla Khan.

8471. Very good. May I go on to another topic ? It is only one or two aspects that I want to put to the Secretary of State with regard to something suggested by Major Attlee, which I want to be clear about ?—May I just before Mr. Zafrulla Khan departs from the question of tributes say in a sentence or two my own view about the question ? I am quite aware that many anomalies can be urged against any such arrangement as that suggested by Mr. Davidson's Committee, and I am quite aware that historically you can make every kind of case against every kind of action in

this or that instance. I am, however, quite clear that they are a tiresome form of contribution : that, judged by modern conditions, many of them are very unsuited to a new Constitution, and that, quite apart from their justice in the past and the historical reasons that led to them, it would be a very good thing to get them cleared out of the picture in any new Indian Constitution. Further than that, that Members of the Committee and Delegates should remember that there is not a very large sum at stake. Under a system of annuities and setting the tributes against the immunities, it would involve an expenditure of about £280,000 a year. I am inclined to think that from every point of view, the point of view of both British India and the point of view of the Indian States, it would be worth making an expenditure of that kind under the new Constitution. It would be worth clearing out of the way a number of these rather tiresome questions, but if they are not settled in a rather rough and ready way at the start they will, I believe, lead to almost endless friction in the future.

Marquess of Zetland.

8472. Did you say £280,000 ?—The figure I gave (I am reminded) was for the ceded territories. The figure for the tributes and the immunities would be a further figure of about 50 lakhs.

Mr. Zafrulla Khan.] What would be the total in lakhs both in respect of tributes and for compensation for ceded territories ?

Rao Bahadur Sir Krishnama Chari.] Excluding immunities ?

Mr. Zafrulla Khan.

8473. Yes ?—(Sir Malcolm Hailey.) It is a little difficult to calculate the exact amount of the immunities, but you may take it between  $\frac{2}{3}$  of a crore and one crore. Those would be probably the minimum and maximum figures.

8474. Annually ?—Annually.

8475. Now, Secretary of State, if you will be kind enough to answer, there are one or two questions on Major Attlee's aspect of the proposal. I do not want to press you if there is any difficulty about it. The position is this : If under the

scheme of Federal finance which is at present in contemplation in the White Paper there were available to the Federation resources from which they could make subventions to the Provinces, do not you think the Provinces would claim from the very beginning that they should be given a larger share out of the Income Tax if the Federal sources of revenue are to leave large sums to the Centre for making subventions to the Provinces ?—(Sir Samuel Hoare.) I think that would certainly be the case.

8476. On the other hand, if the centre, in order to be able to make these subventions to the Provinces, wanted to take away any source of revenue at present allotted to the Provinces, do not you think they would resist it very stoutly ?—I think they would.

Sir Abdur Rahim.

8477. Secretary of State, may I draw your attention to Proposals 134 and 135 at page 73 of the White Paper ?—Yes.

8478. Do I understand it correctly, that under these proposals the commitments and obligations of India would be a liability both on the Federal and Provincial revenues ?—It is a question that refers less to finance proper, does it not, and more to legal rights after the Constitution comes into operation ?

8479. Yes ; but what I mean is that the obligations of India would be a charge both on the Federal and Provincial revenues ?—The previous obligations, yes ; the obligations previous to the Constitution.

8480. In that case, so far as the credit of India is concerned, with respect to the previous obligations, that would not be affected by any allocation of revenues between the Federal Government and the Provincial Government. Is not that so ?—I think Sir Abdur Rahim is right, that so far as the assets are concerned, that is so.

8481. Then, further, the White Paper, provides for the Governor-General having a special responsibility with regard to the credit and financial stability of the whole of India ?—Yes. I suppose Sir Abdur Rahim means of the Federation.

8482. Does not it mean of the whole of India ?—No ; it means the Federation.

Dr. Shafa'at Ahmad Khan.

8483. It does not apply to the Provinces only.—No, I have said it applies to the Federation.

Sir Abdur Rahim.

8484. The credit of the Federation, yes. At any rate, so far as the Proposals 134 and 135 are concerned, that concerns the whole of India. My object in putting these questions was that I suggest to you that to that extent the allocation of revenue between the Centre and the Provinces would make no difference. I want to ask you one or two questions as regards the statement on the Financial Memorandum. May I draw your attention to page 23 of this statement, the last paragraph? There you refer to six to ten crores as being the deficit which is due, not to the setting up of the Federal Government and the Centre, but to the setting up of autonomous Provinces upon a self-supporting basis?—Yes.

8485. May I take it that this sum 6 to 10 crores includes the loss to the Central Revenue of Burma separating?—Yes.

Lord Rankeillour.

8486. What is the reference?—The reference is to the speech I made commenting upon Sir Malcolm Hailey's Memorandum, pages 23 and 24.

Sir Abdur Rahim.

8487. I wish to draw your attention to the Second Volume of the Simon Commission Report at page 219?—If you will tell me what it is, I daresay I shall recall it.

8488. That is the Layton report. There the figures are given showing that the accumulated deficits since the Montagu-Chelmsford Reforms amount to no less than Rs. 80 crores towards meeting which the Provincial contributions provided some Rs. 50 crores. Therefore, the present situation of the finances of India is not entirely due to the world economic depression, but there has been a deficit going on since 1921-1922. Is not that so? Is that a correct statement?—(Sir Malcolm Hailey.) Yes, that enters into the present situation of our finances. We were still carrying at that time a great deal of expenditure due to

operations in Afghanistan and on the frontier. It was partly responsible for the deficits which were incurred in those earlier years, 1921-1922.

8489. Do you suggest that but for those operations there would not have been those deficits?—I think those operations were largely responsible for deficits. I would not be able to give a precise answer without analysing the whole reason for the deficits, but my recollection is very clear of the large amounts which went in to make those deficits as a result of the operations.

8490. My object in putting these questions to draw the attention of the Secretary of State to these facts is that apart from world recovery there would be still a financial situation in India which has to be taken into consideration, and I am suggesting this, that so far as making the Provinces autonomous is concerned, that has to wait until the Provincial Governments have been started on what you have described as an even keel. That may mean an indefinite waiting?—(Sir Samuel Hoare.) I do not think so. I think if Sir Abdur Rahim will look at the answers I have given about times and seasons more than once, particularly the answer I gave to Dr. Shafa'at Ahmad Khan, and I think to Sir Tej Bahadur Sapru, he will see that is not what I contemplate. I do not assume that an even keel means that a Province would have no debt, but I do assume that it has made satisfactory arrangements to deal with that debt, and that there is a reasonable prospect of its being able to deal with the debt in the future.

8491. What I would put to you is this: Supposing, as proposed in the White Paper, the Income Tax was divided in the way proposed, 50 per cent. and 50 per cent., and the jute duty was allotted to Bengal, as you have made quite clear, then, in that case, the Provinces would be able to go on without serious anxiety as to the immediate future. Of course, nobody can be sure about the finances of a country like India?—There is a great deal in what Sir Abdur Rahim says. There is the further point—I do not want to exaggerate it unduly, but it is a further point that he must take into account, namely, that, as things are now,

the Provinces can go on drawing almost indefinitely upon Central Funds. Obviously, if the Provinces are really going to become autonomous and are going to be responsible in the future for their finances, they cannot depend in the same way on this kind of dole from the Centre in the future.

8492. And it is really not fair to the Centre?—It is fair neither to the Centre, nor is it fair to the Provinces, because under any arrangement of that kind, it cannot be said that they are really responsible for their own affairs.

8493. Exactly; that is why I am suggesting there is all the more reason why you should try to make the Provinces financially autonomous, as soon as possible, and cast the responsibility on the Provinces themselves to carry on their Government without looking always to the Centre?—That is very much the basis of our proposals.

8494. And, of course, in case of any emergency, the Centre, I understand, would have the power as provided in the White Paper, of calling upon the Provinces and the States for contributions?—Yes, there is the surcharge upon the Income Tax.

*Sir Austen Chamberlain.*

8495. There is only one point about which I wish to question you, Secretary of State, in order to clear up some doubt which exists in my mind about paragraphs 139 and 141 of the proposals. Paragraph 139, as I understand, contemplates that Income Tax at a certain rate will be divided in prescribed proportions between the Federation, on the one side, and the Provinces together with such States, if any, as may agree to subject themselves to Income Tax, on the other, to be divided between the two in prescribed proportions?—Yes.

8496. How do you arrive at the rate of Income Tax? Paragraph 141 deals with additional Income Tax, called surcharges on income which may be required to meet Federal necessities. That is so, is it not?—Yes.

8497. Is any addition to Income Tax, beyond the rate contemplated in paragraph 139, to be considered a surcharge?—(Sir Malcolm Hailey.) Sir, I do not

think that paragraph 139 proposes to do anything except to lay down a principle of allocation, that is to say, the principle of allocation would be that taking Income Tax as a whole and all its heads, 50 per cent. might go to the Provinces; then it would be necessary to prescribe how that distribution should be made as between the Provinces, and there are various alternative systems.

8498. I do not want to go into that at the moment; your answer is sufficient for my purpose. Under Article 139, it will be decided that Income Tax is to be divided between the Federal Government and the Provinces in certain proportions?—Yes.

8499. If a surcharge is levied under paragraph 141, the whole of the surcharge is reserved to the Federal Government?—Yes, that is so.

8500. How do you decide whether an addition to Income Tax is a surcharge, or not? If you do not prescribe a basic rate, any increase above which is a surcharge, how do you decide whether that increase is, or is not, a surcharge, and is, or is not, to be distributed in the prescribed proportion to the Provinces or, on the other hand to be reserved only to the Central Government?—I think I might best illustrate that from what we have recently done in India. We lay down in our Income Tax Act certain rates of Income Tax, that is to say, using our expression, so many annas in the rupee. For emergency purposes, we have put on that a surcharge of 25 per cent. and it would be a surcharge of that nature to which 141 applies. It is not a general increase of Income Tax rates, but it is a specific surcharge on those rates.

*Earl Peel.*

8501. It is like the charge of the surtax in this country, is it not?—(Sir Samuel Hoare.) Sir Austen's question, if I understood it, is this: when does the ordinary Income Tax become the surtax?

*Sir Austen Chamberlain.*

8502. What is the dividing line between ordinary Income Tax and a surcharge? Is it that the one is expressed

in annas in the rupee, and the other is expressed as a percentage of the existing tax?—There is no distinction in amount at all. It will rest with the Federal Legislature, and the Federal Legislature will decide, under paragraph 140. If Sir Austen will look again at 140, I think he will see that it is the framework within which the Legislature would act.

8503. But if it is Income Tax, under 139, no equivalent contribution, I understand, will be paid by any State, except a State which expressly agrees to subject its people to Income Tax?—Yes.

8504. If it is a surcharge under paragraph 141, the State which has not agreed to subject itself to Income Tax will pay an equivalent contribution?—Yes.

8505. Is it to be expected that the Federal Legislature will ever, in those circumstances, increase the ordinary Income Tax, and will it not always for its additional needs have recourse to the surcharge?—I see Sir Austen's point.

[Sir Austen Chamberlain.] I will make my point a little clearer, perhaps, by referring to a statement made by Sir Akbar Hydari yesterday in which he treated the surcharge as something which would be used only in an emergency.

[Sir Akbar Hydari.] Is it not this, that if there is a raising of the rate of Income Tax—that is so many annas in the rupee—would it not be that in that case it will be shared by the Provinces alone and, therefore, the urge for raising that rate will come partly from the Provinces and not so much from the necessities of the Federal Government? If it is the necessities of the Federal Government, then the urge will be more in the nature of a surcharge. I do not know whether that is so, or not?

[Sir Manubhai N. Mehta.] What we understand by the surcharge is, that surcharge will be resorted to only during an emergency.

[Sir Austen Chamberlain.] I want to know whether the Secretary of State understands by the surcharge what you understand.

[Sir Manubhai N. Mehta.] In the Report, it is stated that after exhausting all the remedies of tax and economies,

if still the budget is not balanced and an emergency arises, in that case a surcharge will be imposed.

Sir Austen Chamberlain.

8506. I should be very glad to have an answer from the Secretary of State?—That is what we mean.

8507. You mean that the surcharge would be resorted to only when all other sources of Federal Revenue had been exhausted?—Yes, I think that is so.

Earl Peel.

8508. I think that was the answer you gave me yesterday, Secretary of State, and in which you also said that the Governor-General would be the judge of the emergency. I asked you that particular question as to the relation between those two paragraphs?—Yes.

Chairman.

8509. Perhaps, you would like to look at the transcript and see whether it is desirable that you should make some short statement this afternoon?—Yes.

Marquess of Lothian.

8510. Is not that the purpose of paragraph 140?—Yes, that is the purpose of 140; it gives the Governor-General the power of previous sanction.

Lord Rankeillour.

8511. Does it not come to this, that in laying the resolution or laying the proposal before the Assembly the Federal Government could call it one thing or the other and they would be bound to the Assembly to reject or to pass it under the form in which it was presented by the Indian Government?—Yes, I think that is so. There will be the three points of view; there will be the point of view of the Federal Government, there will be the point of view of the States, and there also will be the point of view of the Provinces that the Governor-General will have to take into account.

8512. But, as a matter of fact, whatever the Federal Assembly may do in rejecting it or otherwise, the Government will have the option in calling it an increase of the basic rate or calling it a surcharge?—Yes.

8513. And the Assembly will have to reject it, according to what name it is called by?—Yes, I think that is so.

Sir *Austen Chamberlain*.] There will be taxes with a different incidence in the two cases?

Lord *Rankeillour*.] Certainly.

Sir *Austen Chamberlain*.] Secretary of State, that is all I want to ask you on that particular point.

Marquess of *Salisbury*.

8514. Might I just put this: As I understand, the surcharge is only an emergency tax?—Yes.

8515. Besides that, there is the ordinary increase, or there may be an ordinary increase, of the Income Tax?—Yes.

8516. Upon that, there will be no equivalent contribution from the States?—That is so.

8517. But I am compelled to put this question then to the Secretary of State: Is the Committee to understand that the States, who are going to contribute nothing to this ordinary increase of the Income Tax, will yet be entitled to vote the increase of the Income Tax, because they will be Members of the Assembly?

If Lord *Salisbury* remembers, that question was raised when we discussed the various alternatives proposed, as to whether the representatives of the States should, or should not, take part in British-Indian questions. I expressed the view that I repeat now, that it must be left to a Convention. I do not know what the representatives of the States would say upon a point of this kind. I imagine that under the Convention they probably would not take part in the voting.

Sir *Mirza M. Ismail*.] We agree with that.

Sir *Akbar Hydari*.] Is it not that the whole picture is like this, that in determining the exact point at which the Indian States come in, you will have to take into account the basic rate of Income Tax at that time existing; that after that, whatever increase there is in the Income Tax beyond that rate, whether it is in the form of an increase in the Income Tax or whether it is in the form of a surcharge, the total amount that will have to be brought into the Federal fisc as an emergency contribution, would have

to be determined, and the portion allotted to the States determined. What I say is that in order to make a definite contract with the Indian States, you will have to state exactly what will be the basic rate of Income Tax as then existing.

Sir *Austen Chamberlain*.

8518. Then this, Secretary of State, is what I understood—what Sir *Akbar Hydari* is putting, that you would fix the basic rate and that anything beyond that basic rate would be a surcharge. I do not want to press you at this moment on a matter of such complication and where we fire questions at you from all round the table, but will you consider the point, and put in a Memorandum on the subject?—Yes, certainly, and I will ask the representatives of the States also to give their mind to the point that Sir *Austen* has raised. I am not quite sure whether they all take the same view, and, if so, what it is. I should like their view also.

Mr. *M. R. Jayaker*.] May I remind the Secretary of State in this connection that when discussing the question as to how far the State representatives should take part in purely British-India matters, I raised this very specific question. I said, if the surcharge would take the form not of a percentage upon the Income Tax, but an additional Income Tax, and, supposing the Income Tax to be contributed by the Provinces is 4 annas in the rupee, and a Bill was brought for a surcharge for an additional 2 annas in the rupee, and such a Bill was there, and the Prime Minister said that the Government would regard this Bill as the essence of their confidence, would the State representatives take their share in the discussion and the voting on the Bill, I think Sir *Akbar Hydari* stated, and the other States did not protest against it, that it must be left to the good sense of the State representatives to come in and vote for these additional 2 annas in the rupee, which is to be paid by the British-Indians only.

Sir *Austen Chamberlain*.

8519. If I may say so, that is really an issue which may need to be argued when we know exactly what the Secretary of State proposes, but I hope that the

answer to my question will be given apart from that issue ?—Yes, certainly.

8520. Is there a basic rate of tax beyond which any increase is a surcharge ; the basic rate being divided among the Federal Government and the Provinces in the prescribed proportion ; the whole of the surcharges being attributed to the Federal Government, the basic rate being not paid nor any equivalent to it paid by the States, but the surcharge importing an equivalent contribution by the States. Is there nothing between those two, or is there some form of raising the ordinary rate of Income Tax following out the distribution in paragraph 139, without involving any contribution to the States or by the States. I put that on the record. I do not ask for an answer now ?—I will certainly deal with all those important points in the Memorandum which I will send in.

Earl Peel.] Secretary of State, is not the question quite distinct of an increase in the rate of Income Tax and a surcharge on the Income Tax ? In the case of the surcharge, do you not take the existing amount of Income Tax raised, and then take a percentage upon that amount so raised ? Is not that a surcharge, quite different from the question of raising the actual amount of the rate of the Income Tax ? Of course, I agree, that surcharge might be expressed as an increase of Income Tax, but that is not the basis of the tax at all. It is a definite percentage of the amount raised by the Income Tax at whatever rate that Income Tax stands.

Sir Austen Chamberlain.] But it is also stateable in the same terms as the Income Tax as so many annas in the rupee.

Earl Peel.] It may be stateable, but it is not the origin of it.

Sir Austen Chamberlain.] It is stateable, but it is not stated.

Witness.] The rough answer would be that the Federal Government states when it is a surcharge and when it is not ; but I will deal in detail with the questions that both Lord Peel and Sir Austen Chamberlain have raised.

Chairman.

8521. Secretary of State, will you make clear in the note what exactly is meant

by "emergency." Both our experience both of public and private finance associates the word "emergency" very easily with finance ?—It is explained in the statement which Sir Akbar read the other day.

Sir Akbar Hydari.] In the statement I gave yesterday, it ran as follows : "If at any time even during the period of the first ten years the financial position becomes such that the Federal expenditure cannot be met from sources of Revenue permissible to the Federal Government, after all possible economies have been effected and the resources of indirect taxation open to the Federation exhausted, and the return of the Income Tax to the Provinces further suspended, a state of emergency will be held to have come into being when all Federal units will make contributions to the Federal fisc on an equitable and prescribed basis." So the emergency which we consider is, that either within the ten years or later when all the possible economies have been effected and all the sources of indirect taxation open to the Federation have been exhausted and nothing paid to the Provinces out of the Income Tax more than what they were at that time receiving, then still if the Federal Budget is not balanced, except by this recourse to either a raising of the Income Tax or to any other source, we shall come in also and make a proportionate contribution on a prescribed and equitable basis.

Lord Eustace Percy.

8522. May I ask the Secretary of State in drawing up his statement to consider this difficulty about the whole percentage system that in the case where short of a serious emergency you want to balance your budget and it is most convenient to do it by income tax, you will always have to put on double the rate of income tax necessary in order to provide the 50 per cent. for the Provinces ?—I have had that point in mind.

8523. It applies equally, of course, if the pressure comes from the Provinces : They want some more income tax ; you have to impose double what the Provinces want ?—I have had that point in mind, and all these various points that have been raised confirm me in the view that the key to the arrangement whatever the arrangements may be must be



the Governor-General's previous sanction.

8524. That does not get over my difficulty?—Yes, I think it does. I think if Lord Eustace will look further into it he will see that with these considerations to be taken into account, and with the pull of the Provinces against the Federation, the Federation wishing to retain the whole tax for itself, the Provinces wishing it to be a normal income tax under which it will get whatever the percentage is, there must be some impartial authority to decide between them.

8525. The Governor-General has no power except to decide either that the Federation will take the whole 100 per cent., or that the Provinces must have 50. He is tied to those two alternatives, and, being so tied, I think the anomalies I have suggested will always arise?—I see. Anyhow I will look into Lord Eustace's point.

*Sir Austen Chamberlain.*

8526. This is a point to which I alluded yesterday. I will put two cases. The first case I put to you is that the Federal Government has sufficient resources, but the provinces generally are short of money, and ask for an additional levy to the income tax in order that they may get more?—Yes.

8527. Under the White Paper there is no means raising, say, one anna for Provincial purposes without raising in those circumstances another anna, which *ex hypothesi* is not needed, for Federal purposes. The other hypothesis is that the Provinces do not need any more income tax, but the Federal Government does, and you then have to raise double the amount (assume that the percentage prescribed is 50-50) you have to raise two annas in order that the Federal Government may get one because, for every one it takes, it must give one to the Provinces, even though they do not want it?—I will take all these points into account. I would ask the members of the Committee to remember that there must be (whatever the arrangements) anomalies. I do not say exactly of the kind contemplated in the White Paper, but anomalies of some kind under any system under which the income tax is shared between the Centre and the Provinces.

*Dr. B. R. Ambedkar.*] May I draw the attention of the Secretary of State and Sir Austen Chamberlain to two points? Sir Austen said there is no provision for the Province to raise any income tax if it wanted it for its own purposes. I wish to draw his attention to Proposal 139, and what appears in the brackets, "A prescribed percentage, not being less than 50 per cent., nor more than 75 per cent. of the net revenues derived from the sources specified in the margin"—(that is the income tax)—"(exclusive of any surcharges imposed by the Provinces)." I take it from that the Provinces will have the right to levy a surcharge on the income tax for their purposes.

*Sir A. P. Patro.*] In addition.

*Dr. B. R. Ambedkar.*

8528. That is Proposal 139?—That is so, and the Committee will see that we alluded to it at the top of page 30 of the Introduction.

8529. May I draw the attention of the Secretary of State to a statement that he made just now, that with regard to the imposition of surcharges for Federal purposes on the income, I think he said the key to the position was the previous sanction of the Governor-General. I would like to draw his attention to the fact that Proposal 141 does not stipulate that the previous sanction of the Governor-General will be required to surcharges for Federal purposes. The previous sanction of the Governor-General refers to revenues assigned to the Provinces, namely, those enumerated in Proposals 138 and 139. Paragraph 141 is not made dependent on the previous consent of the Governor-General?—I think Dr. Ambedkar is quite right, and I must look into my answer in connection with the note I will circulate.

*Sir Akbar Hydari.*] There is also Head 49 in the exclusively Federal heads where definitely it is said: "Imposition and administration of taxes on income other than agricultural income or the income of corporations, but subject to the power of the provinces to impose surcharges" under the exclusively Federal heads.

*Lord Eustace Percy.*] I do not think that exhausts it because all the evidence we have received, and all the evidence

I ever heard in India was violently opposed to Provincial surcharges.

Dr. B. R. Ambedkar.] That was the view of the business people, I am sure.

Lord Eustace Percy.] It was the opinion of every single Indian to whom I had the opportunity of putting questions.

Dr. B. R. Ambedkar.] But they were all business men.

Lord Eustace Percy.] No, indeed, they were not.

Sir Austen Chamberlain.

8530. Does corporation tax come in under either paragraph 139 or 141?—Corporation tax is Federal the whole time. Corporation tax is not shared with the Provinces, and corporation tax is quite distinct from this surtax question.

8531. Paragraphs 139 and 141 have no reference to corporation tax?—No.

8532. I ask that because I think in reply to an earlier question, or in earlier questions corporation tax was treated as a branch of income tax?—I see. I am afraid the term was used rather roughly and inaccurately.

Sir Akbar Hydari.] You have the authority of the Percy Committee's Report, paragraph 61, for treating it like that. It is very difficult to define.

Earl Peel.] Is it not stated in the heading that in paragraph 139 you except taxes on the income of companies?—Yes.

8534. That is the corporation tax?—Yes.

8535. It is stated in so many words?—In the margin.

Sir A. P. Patro.] It is explained in paragraph 57 of the Introduction. That makes it quite clear.

Sir Austen Chamberlain.

8536. Thank you. I think it was a question it was just as well to ask because a tax on companies need not necessarily be a corporation tax. In the case of corporation tax if that is not levied in the States will they make an equivalent contribution?—Yes, after 10 years.

Lord Rankeillour.

8537. May I ask a question arising out of Dr. Ambedkar's. I think it is of some importance. With regard to the

consent of the Governor-General, surely all Federal taxation will be subject to the consent of the Governor-General. It can only be on his initiation, and a resolution such as we have here, that any tax can be considered?—Yes, but I think Lord Rankeillour really is confusing the two positions. There is the general Constitutional position under which money votes originate with the initiative of the Crown. That position, of course, stands. I was contemplating the other position in which the Governor-General intervenes under some special obligation in the Indian Constitution.

8538. I felt sure that was the meaning, but the actual answer given to Dr. Ambedkar would seem to suggest that under paragraph 141 the Federal Legislature would have the power to act without the Governor-General's previous recommendation.

Mr. M. R. Jayaker.] May I ask Lord Rankeillour's attention to Proposal 45, which deals with this question. "A recommendation of the Governor-General will be required for any proposal in either Chamber of the Federal Legislature for the imposition of taxation."

Lord Rankeillour.] Yes, so I thought. I quite agree.

Dr. B. R. Ambedkar.] That relates to the special power of the Governor-General, and that is made so because the taxes contemplated in paragraph 138 are not to go to the Central fisc, but they are to be distributed amongst the Provinces.

Sir Phiroze Sethna.

8539. In regard to the appointment of the financial adviser to the Governor-General is that appointment supposed to be permanent?—It is permanent to this extent, that it will rest with the Governor-General as to how long it goes on.

8540. But since the appointment is required mainly because of the financial difficulties during the transition period, would it not be appropriate to provide that his appointment is fixed for five or 10 years, and that thereafter it is continued if the Minister so desires?—No, I do not think you could possibly do that for this reason: One of the main duties, in fact perhaps the chief duty

of the financial adviser will be to watch finance from the point of view of the Reserved Departments, and you could not therefore put a time limit to an appointment of that kind until you know how long the Reserved Departments are actually going to exist.

854L. Then it is contemplated that the appointment will continue until this is considered a part of the Reserved Department?—I do not quite follow the question.

8542. The Governor-General will continue the appointment so long as these functions are part of the Reserved Department, or so long as he wants to have his advice. It will be left to him alone to decide?—So far as he wants this advice certainly.

8543. Will he have access to the Finance Department?—We certainly contemplate that there should be the closest contact between him and the Finance Department. My own view is that the Finance Department will find the financial adviser of great value to them and of great value to the Federal Government.

*Mr. M. R. Jayaker.*

8544. May I ask a question to clear up this point?—Yes.

8545. Is it optional with the Governor-General to determine the appointment of the financial adviser, although the Reserved Department may continue?—It is so difficult to give an answer to a question about a future that one does not see in sufficiently concrete form. The proposal is this, that as long as the Governor-General thinks that a financial adviser is needed for carrying out his special obligations the appointment will continue.

*Sir Phiroze Sethna.*

8546. At his discretion?—At his discretion.

*Sir Phiroze Sethna.*] His sole discretion.

*(After a short adjournment.)*

*Sir Purshotamdas Thakurdas.*

8552. There is at present in the Military Department or the Military Secretariat in India a Financial Adviser,

*Mr. M. R. Jayaker.*

8547. I wanted to know whether it is the scheme of the White Paper to make the duration of this appointment co-extensive with the duration of the special responsibility and the Reserved Departments, or whether the Governor General is at liberty to terminate it if sufficient confidence he feels?—I should not like to tie it up with a date at all. The proposal is quite definitely this, and nothing more, that as long as the financial adviser is needed there will be a financial adviser.

*Sir Phiroze Sethna.*

8548. As regards the Reserved Departments, what is the machinery for controlling these Reserved Departments, and will this machinery be under the control of the Finance Member?—I am not quite clear what is meant by "machinery".

8549. Who is to be in charge?—Who is to check the expenditure whether it is justified or otherwise; will not there be some superior officer to do so?—There must be due auditing, of course.

8550. Has not the Finance Minister anything to do with it?—The Department would be self-contained—the Department no doubt that is chiefly in *Sir Phiroze's* mind, namely, the Defence Department.

8551. Yes?—*Sir Malcolm* tells me he can explain in greater detail how it would work. (*Sir Malcolm Hailey.*) The picture that was in our mind was this, that when the budget was prepared then there would be very close contact between the officials in the Reserved Department responsible for finance and the ordinary general Finance Department, but the general Finance Department under the Finance Minister would not have any day to day control over the financial operations of the Reserved Departments which would be self-contained in the sense that they had their own financial adviser and own financial organisation as, indeed, to a large extent, they have at present.

who is a sort of liaison officer between the Finance Department of the Government of India and the Military Department?—I take it from *Sir Purshotamdas* that that is the case.

8553. I think Sir Malcolm Hailey would correct me, if it is not so. Under the new Constitution, would there be a similar officer to the Finance Member in the Military Secretariat to do exactly the same work as the Financial Adviser to the Military Department does to-day? —(Sir Malcolm Hailey.) That is not what was contemplated. At present the Financial Adviser in the Military Department has a right of reference to the Finance Member in any matter of major importance or any matter in which he thinks that the orders of the Finance Member are required. It is not contemplated that in the future there would be that relation between the Finance Department of Defence and the Finance Minister. As I understand was explained this morning, it is contemplated that the Finance Branch of the Military Department would be self-contained and not under the orders or under the control of the Finance Minister.

8554. Sir Malcolm, the Finance branch of the Military Department may neither be under the orders of the Finance Minister nor under his control, but would you agree that it would be necessary to have somebody to act as a sort of watchdog on the expenditure of the Military Department, or not, without any sort of control or authority, but still to keep the Finance Member in touch with any developments that may occur after the Budget has been passed?—I would agree that full consultation is necessary between the Finance Minister and those responsible for preparing the Military Budget; but it would not be consonant with the arrangements contemplated in the White Paper if an officer were present in the Defence Department on behalf of or in any way under the control of the Finance Minister. My answer only went as far as that.

8555. Inasmuch as because of the special responsibility of the Governor-General, you said that it was necessary that the Financial Adviser to the Governor-General should have access to and be in full knowledge of what happens in the Finance Department of the Government of India from day to day, do you not think that the representative of the Finance Minister who has got to look after the expenditure and face the Legislature regarding new taxation, at

least is necessary?—No, because the interest of the Finance Minister in the details and the expenditure in the Finance Department lies only so far in making certain that the Budget is not exceeded. So long as the Defence Budget is kept within the appropriation granted to it, the interest of the Finance Minister really ceases.

8556. Do you not think that the consultation and the general touch of the Finance Minister would suffer very badly, if he is not to know something about what is happening in the Finance Department once, twice or thrice a year?—He, after all, is not called upon to defend in the Legislature the detailed expenditure of the Defence Department.

8557. He may not be, but, I suppose, you would agree that it would be very necessary that he, out of conviction, could defend that part of the Government of India's expenditure and simply say some things which can only be said superficially if he comes with knowledge of the facts once or twice a year?—Yes, it would be of the greatest benefit, if he felt it possible to defend the expenditure and the details of expenditure under the head of Defence; but, for that purpose, it is not necessary that he should have an officer on his behalf who watches the day to day financial operations of the Defence Department.

8558. Can that do any harm, Sir Malcolm?—I can quite conceive that as a working arrangement, it might be very useful. I was really speaking of it from the Constitutional point of view, or as a statutory arrangement.

8559. Let us see what you think about it as a measure of practical usefulness and perhaps one which would disturb the Indian mentality least, if you retain exactly the same procedure as at present, except that the Finance Member's veto is not operative. Could you tell me that it can do any harm, or that it can lead to any clash between the Military and the Finance Member's Department?—In effect, if the Finance Minister had no control. In other words to use that expression that his veto was not operative. If the Finance Minister had no control over the financial operations within the Defence Department, then it would be some arrangement such as I myself have

been describing. The difference between us really only lies in the question whether the Finance Minister will have any control over the detailed financial operations of the Defence Department. There might be the fullest consultation and the fullest means of gaining information on both sides, from day to day, but the question is only one of control.

8560. I will put it from the other point of view: Even in order to enable the Governor-General effectively to decide questions of difference of opinion between the Finance Department and the Military Department, it is necessary that there should be somebody who would bring those things to the knowledge of the Governor-General and I should have thought in fairness to the Governor-General in order to enable him to deal fairly with a question of difference, it may be necessary to have the Finance Department in full possession of the facts, so that he may put up his point of view to the Governor-General effectively and fully?—I dare say, when the Constitution develops, some working arrangement might very easily be arrived at under which full information would reach the Governor-General. At the moment, I was only on the point of safeguarding the position, that as the Defence Department is reserved, its financial operations would not be under the control of the Finance Minister. Subject to that, I would agree that it would be of the greatest benefit if some arrangement could be arrived at for the fullest liaison on both sides.

8561. May I put now this view in one question: That if the present policy of having a Finance Department representative in the Military Secretariat is retained with this exception, that there need not be a veto of the Finance Department member and expenditure is incurred as at present, but that it is necessary that an officer of the Finance Department should be in daily touch with what is going on on the Military side in the Military Secretariat in the Finance line, would you agree with that?—I would rather leave that to be worked out when the Constitution is in working order. I can see that unless the position is worked out a little carefully, there might arise a good deal of friction on the subject.

8562. Do you not think that that friction is likely to be best avoided if the position was cleared up from the start rather than count upon the position developing with the goodwill of the Military Department, whoever may be there?—I, personally, do not think I could commit myself to any arrangement of that kind in advance. I do not think it would be safe.

8563. I do not know whether the Secretary of State would like to add anything?—(Sir *Samuel Hoare*.) Sir Malcolm has very accurately expressed my own view as well. I agree with everything that he has said as to the advantage both to the Finance Department and to the Defence Department in having a very close liaison. I am, however, inclined to the view that you will get a closer liaison and you will get better relations in the long run if you do leave it to people's common sense. I am afraid myself that any attempt to give it statutory form at the commencement of the Constitution would probably create an impression—I dare say, a wrong impression—but would, none the less, create an impression that there was a division of responsibility. My own view is that if that impression was created, it really would make friction, rather than co-operation. Whilst, therefore, I do not at all wish to dissent from the view that Sir Purshotamdas has expressed as to the need for close co-operation, I could not go so far as he seems to go in saying that one can dot the i's and cross the t's of the method of that co-operation in the Constitution Act.

[Sir *Purshotamdas Thakurdas*.] My Lord Chairman, I will leave this point with this expression of opinion on my behalf, that this is the minimum which the public in India would expect, as far as the Reserved Departments are concerned, and I will simply leave it at that.

{ Sir *Akbar Hydari*.

8564. What would be the position of the Auditor-General with regard to this Defence, and how far would his audit reports, and so forth, be available to the Finance Minister? To a certain extent, could not these provide something of the liaison which is required, although it would be *ex post facto*, but still it

would indicate how far the budgetary provisions were being really and truly carried out in the actual expenditure?—(Sir Malcolm Hailey.) I think we might contemplate that the Auditor-General would occupy in regard to the Reserved Departments the same position as with regard to other Departments, but in India, of course, his audit as Sir Akbar has said, is *ex post facto*. It is, in other words, a kind of *post mortem* operation. The point on which Sir Purshotamdas was insisting was that there should be some day to day watching of the operations of the Finance Department, the appropriation report and the Auditor-General's report would bring any matters occurring in the Reserved Departments to the notice of the public and the Legislature, but some time after. There would be no question of pre-audit or questioning of sanctions, or the like.

Sir Purshotamdas Thakurdas.] May I say this, my Lord Chairman, that Sir Akbar Hydari's suggestion regarding audit serving the same purpose is a little irrelevant. What is wanted is day to day touch, as it goes on, and not a *post mortem* over the accounts, a year or six months later.

Sir Akbar Hydari.] What I had in mind was that the audit might be so arranged that it might not be once in six months, but the results might be communicated from month to month.

Sir Purshotamdas Thakurdas.

8565. I am sure Sir Akbar Hydari appreciates exactly the significance of that I am asking for, and I think I may pass on to the next one. Sir Samuel, regarding the tribunal as to whose report you said this morning you would communicate something to the Committee some time in October, may I inquire if it is your intention to publish the Report simultaneously then to the public?—(Sir Samuel Hoare.) I would prefer not to make a final answer to Sir Purshotamdas to-day. There is no secret about the position. The position is this: The Tribunal has made its Report and at present a number of Departments here are concerned in the Report, and so also is the Government of India concerned in the Report. Until I have got the final

communications from those various Departments, I cannot make a statement as to when the Report will be published, or, indeed as to whether it will be published. What I can say is that I feel sure I shall be in a position at the end of the Summer Recess to make a statement on both those points.

8566. A statement which will go on the record here, I take it, and will, therefore, be available to the public?—Yes.

8567. In a previous occasion I have referred to the fact that Land Revenue in India being based for the settlement made between 1920 and 1928 upon the higher prices of commodities, may require or may justify the concessions in Land Revenue. Towards the end of my reference in that connection, I said this: "I do not know whether Sir Malcolm Hailey with his vast experience will differ from me, but I want to put it forward, when we are considering the four leading features which have been considered by the Secretary of State." I wonder whether Sir Malcolm could tell me whether he agrees generally with what I said there?—(Sir Malcolm Hailey.) The consideration that Sir Purshotamdas Thakurdas has put forward applies, of course, to Provinces in which there is not a permanent settlement, because in those Provinces the relation of Land Revenue to the rentals or to the valuation of the produce on which Land Revenue is assessed in other Provinces has really ceased to exist. In the Provinces in which there is what is called a temporary settlement, there are settlements some of which are thirty, and thirty-five years old; they were, therefore, effected at a range of prices which, very roughly, may be taken as approximately near the prices which have resulted from the Depression, but there are many settlements which have been affected at a later date and some, in particular, which have been concluded in the period between the War and 1923-29. There has undoubtedly been a great difficulty in the payment of Land Revenue, owing to the fall in prices, and that has been reflected in the fact that certain Provinces have had to make heavy remissions of Land Revenue. In the United Provinces the remission of Land Revenue

has amounted annually to over a crore of rupees. There have been heavy remissions in other Provinces also. I only give that as typical. Now the expectation that the Provinces would be able for the most part to balance their Budgets this year, is based on the reductions of Land Revenue, to which I have referred, and takes account of them. It is, I think, however, clear that if a period of low prices continues, some of the settlements, concluded in the years of high prices, will have to be revised; that is to say, we shall either have to have temporary *ad hoc* reductions of Land Revenue, or actually revise the settlements, and to that extent, the Finances of the Provinces will be affected in the future. I might say that I think that is one of the factors which will have to be taken into account by the Inquiry of which the Secretary of State spoke. The Inquiry would only, of course, deal with the results of this process, because the policy must remain in the hands of the Local Government, but it would deal with the results of this process on the finances of the Provinces in the future.

8568. Secretary of State, I now wish to refer you to a statement which you have made that there is still opportunity for economies to be carried out in certain fields of administration in India. May I ask if you would expand on this, and tell us in which Departments, either Transferred or Reserved, you expect this, and approximately, if you will kindly give us an idea of the extent that you expect?—(Sir Samuel Hoare.) I would prefer not to give details, and I would prefer not to state, even roughly, what I think the extent of those economies might be. As soon as I start giving details, I then do really involve myself in the Budget responsibilities of the Provinces, and of the Centre. As soon as I deal with the extent of the field of the economies, then I may be restricting the field of economy, although I do not intend to do so. Sir Purshotamdas must take it from me that I did not make this statement without having certain ideas in my mind. I do not say that the field of economy, after all the economies that have been made both by the Centre and by the Provinces, is an unlimited one, but I do believe, from the information at my disposal, that there

is still an opportunity of further economy and particularly in the Provinces.

Sir *Abdur Rahim*.

8569. May I ask one question, is this part of the reduction of salaries for future entrants to the Services?—Yes. I have got other directions in my mind as well. What I am very anxious to do is to impress upon the Provinces, even after the great sacrifices they have made, that they must once again look into their Budgets to see whether there is not an opportunity of further economy. I do not want the Provinces to go on with the impression that the time for making these efforts is past, and that they are going to set their finances right by getting grants from the Federal Centre.

Sir *Purshotamdas Thakurdas*.

8570. I appreciate the reason advanced by the Secretary of State as to why he will not go into the details of this, but I wish to ask this question from this particular point of view, namely, is there any room for further economy in the nation-building Departments in the Provinces, such as Medical, Sanitation, Education, and such social Services about which I see even in the Simon Commission Report they say that the proportion of amounts spent in the Provinces on these social Services is much too small as compared with the amounts spent on Departments which do not bring it in relief to the taxpayer, such as the Military Departments of the Government of India, for instance?—I would not like to give an answer to a question of that kind. I think it is essentially a question that must be answered Province by Province. I am fully aware of the fact that there is a great need for expenditure upon social Services in India; at the same time, I would not like to give an answer that implied that even accepting that assumption, there was not still an opportunity for saving unnecessary expenditure upon this or that detail.

8571. I will leave it at that, and I will not ask any more questions about it. Now, regarding the cut in the pay and the partial restoration of it till now, I understood you to say yesterday in reply to a question from Sir Reginald Craddock that you—please correct me if

I am wrong—but the impression I got as I heard you yesterday was that you looked upon that as a first charge upon either any surplus or on any further margin that may be realised in the Provincial Budgets. I wish to ask, in the first instance, whether you can enlighten me regarding any other country which since 1929 has made a cut in the pay of its Services, and has restored a part of it till now?—I do not know whether there is a case, or whether there is not; I have had to take the Indian case upon its own merits, and there I have felt that in the special conditions of Service in India, these cuts must be regarded as emergency cuts. Indeed, when I introduced the two Bills in the House of Commons, I stated that fact, and said that they would be removed at the earliest opportunity. I stand by that statement, particularly for this reason: I have the very strong view that if Provincial Autonomy is to start in a satisfactory atmosphere, we must avoid any feeling of resentment and discontent amongst the Services upon whose backs a great deal of the burden will fall in starting the initial stages of the new Reforms. On that account, I think that it would be much more satisfactory that the cuts should be restored, and that there should be no ground for any feeling of resentment, when Provincial Autonomy is actually started. That is my position. I do not say that it is a law of the Medes and Persians that this or that item in the Budget has to be dealt with in a particular way before Constitutional changes take place, but I do say that by far the best and far the wisest course in the interests of the Provinces themselves would be to restore the cuts before the change is made.

8572. I agree with the Secretary of State fully that a contented Service is the greatest asset to a State, but where there has to be emergency taxation and countervailing emergency cuts, should they not both have simultaneous consideration for relief, or should one have a preference over the other, and further, should it be necessary to raise taxation in order to introduce the Reforms, would it not be said that the interest of the taxpayer has been held to be secondary by a far greater degree over the interests of the Services?—It is

always difficult in the matter of the restoration of cuts to know where to begin. We shall have, no doubt, just the same kind of problem here, but there never has been any doubt upon this question in India or here, so far as the Services are concerned. We have always stated that we do regard this as the first charge to be removed.

8573. Would I be correct in inferring from what you have said, that it would be regarded as such, even though taxation may have to be increased in India from the present level?—I hope that is not going to be the case. I am emboldened to say that from the fact that I believe it will be possible to restore these cuts, and that it will be possible to start Provincial Autonomy.

8574. Without additional taxation?—Yes, that is my hope.

*Dr. B. R. Ambedkar.*

8575. My Lord Chairman, may I just intervene for a moment for the purpose of asking for information, not for raising any controversy. The Committee knows that there is a certain amount of difference of opinion on the expression "existing and accruing rights." The Civil Service takes one view; the Law Officers of the Crown take another view, and I believe this Committee will have to give some sort of opinion upon that subject before the clause is drafted. I find exactly the same expression "existing and accruing rights" used in the South African Constitution of 1909, and I wonder whether it would not be possible for your Lordship and the Secretary of State to obtain the Memorandum from the Dominions Office to find out exactly how that clause has been acted upon, and interpreted by the South African Government?—I will certainly look into that suggestion. In any case, it is a question which we must deal with when we come to the Services. It is not quite the same question though that Sir Purshotamdas put to us.

8576. No; that is why I said I did not want to raise any controversy. I am simply asking for information as to whether that would not be possible as a sort of comparative view?—Yes.



Sir Purshotamdas Thakurdas.

8577. Lord Hardinge yesterday referred to a statement in which I said that the present conditions are so bad that the finances of the Government, both Central and Provincial in India, are in a comparatively critical condition. The Secretary of State said in reply when Lord Hardinge said he was inclined, in general, to agree with this, that he would not go so far as to agree to this, and that he pointed to the fact that the credit of India stood high at the moment. I wish to put it to the Secretary of State this way: In order that the credit of India should continue to be at the point at which it is at the moment, either world trade must improve very soon or gold exports from India must continue. Would the Secretary of State agree with that?—Yes, I think I should.

8578. Therefore, under any one of these two contingencies we should have good luck, but as we are framing this constitution, as far as the finances of it are concerned, on a comparatively conservative basis and from a conservative point of view, may I ask whether, should either of these not prevail, it would not be necessary to economise to the greatest extent in every possible avenue of expenditure incurred, Federation or no Federation, reforms or no reforms?—I think it might be, and it was because I had that fear in my mind—a very remote fear, but at the same time a fear one must take into account—that I used the words I did use about the necessity of our readjusting ourselves to a new position if things did not go better.

8579. In that case, a suggestion of the nature, that Lord Hardinge put up, namely, putting up salt duty or any other taxation, would be a matter which would be, comparatively speaking, impossible of any serious consideration?—It is so difficult to say what could or could not be considered when one does not know the situation, but if Sir Purshotamdas means that if the state of the world gets worse taxation will become more difficult, I agree with him.

8580. No, Sir. I said this: If world trade does not improve so much or as well as you are counting upon, or the

gold export of India does not continue for the period which will intervene between the world trade improvement and now (I am not thinking of when conditions get worse) then it would be a most difficult proposition. I am thinking of a slower recovery than the one you expect?—Yes, I would certainly agree (except for the question of the match tax that we have discussed in the past, as you know) that, in conditions of that kind, it will be more and more difficult to impose new or additional taxation.

8581. In fact, it would come to this, Secretary of State, that no country since 1929 that I know of has thought of increasing taxation. The complaint and the cry all round have been for decreasing taxation and until world trade comes back to something that may be regarded as normal, or until the grower of raw material in India gets a much higher price for his commodities than he has been getting during the last two or three years, the increase of taxation in India may be said to be almost out of the question?—I am afraid taxation here has gone up substantially since 1928-29. I do not suggest that that is an example that other countries should everywhere follow, but it shows the great danger of my giving a general answer to a question of that kind.

8582. I sympathise with any country that has its taxation raised, but the point is that the taxable capacity of the people of India as compared with the people here is quite a different proposition, and whilst I sympathise with you, I submit there is no parallel between these two conditions?—I would rather not get into general answers to questions of that kind.

8583. No; but you would agree that unless world trade improves, the question of any increased taxation would not be a serious proposition?—I said just now, and I think I had better stick to the answer I gave, that I think the problem of increased taxation would become more and more difficult.

8584. I want to ask one or two general questions regarding the military part. Before I pass on, when the Secretary of State mentioned about the match tax, about which he said I knew, we discussed the possibilities of that tax last year;

but I am sure he will agree that it does not in the present circumstances in any way connote my approval, or in fact it does not connote any approval on my part, of additional taxation for the reasons which I have just now discussed with you ?—I fully accept Sir Purshotamdas's view. I only mentioned it for this reason. I was expressing neither support for it nor opposition to it, but it was one of the possible taxes that was considered at the conference.

8585. So was tobacco tax considered. To that extent we did discuss it. The military expenditure of India to-day is about 46½ crores ; it may be correctly stated as 46½ crores, plus the loss on strategic railways and the frontier watch and ward expenditure which is not included in these two items, bringing the whole thing up to something like 52 crores ?—Yes ; but Sir Purshotamdas will no doubt keep in mind the fact that so far as I know the upkeep of strategic railways and the administration of a frontier are nowhere charged to Defence expenditure in any other country in the world. For instance, if he will take the returns that are annually sent in to the League of Nations of the defence expenditure of all the great countries of the world I do not think he will find that items of that kind are ever included.

8586. Were they not included before a certain period in a Government of India budget ? I ask for information ; I am not quite sure ?—I am not sure about the Government of India budget. My point was rather this : I gathered from his questions that he was suggesting these items ought to be added to the defence expenditure in India. I could not agree with that suggestion for the reason that I have just stated. So far as I know, they are included in no other military budget in the world.

8587. That is why I asked whether in the Government of India budget they were included or not. My impression is (but I am speaking from a very hazy memory) that for a certain period back they were included in the Government of India budget ?—I do not know about that. We will look into that.

8588. May I refer to the Inchcape Committee Report of 1922-23, where under the Head of Defence, on page 43,

I will read to you one sentence at the end : The actual expenditure on the Royal Air Force in 1913-14 was 41,000 rupees ; in 1921-22 it was Rs. 1,31,29,000, in 1922-23 it was a crore and 41 lakhs. This is the sentence with which the Inchcape Committee end that paragraph : "Since the potentialities of the Air Force in India are only now being proved, and there is a possibility that the extended use of the Air Force might result in economies in expenditure on ground troops, we make no recommendations." In fact, from the year 1921-22 (that is the latest figure), the Royal Air Force was the one item where the Inchcape Committee left even an increase of eight lakhs without any criticism. I wish to ask whether the Government of India have examined this possibility of the extended use of the Air Force resulting in economies in expenditure on ground troops at all now ?—I am glad Sir Purshotamdas has raised a question in which I personally have been very much interested for a great many years. I have always made the argument that in certain conditions the use of the Air Force was an economy. Certainly that argument has been borne out in our experience in India. It has been possible to reduce a number of units in India and in particular it has been possible to reduce the number of units upon the Frontier owing to the substitution of the Air Force. I have not got the figures with me to-day, but there have been quite a number of units reduced, and without tying myself down to a precise statement that this or that unit reduction was directly due to the Air Force, I can state generally that, without the substitution of the Air Force in the Frontier districts, the reductions that have taken place in Indian defence would not have been possible upon the scale upon which they have been possible.

8589. Would it be too much if I suggested that we may have a note on this, at your convenience, circulated to the Committee ?—Yes, I will see what we can do. The difficulty, as I say, is definitely to state that this or that particular reduction is due to the increase in the Air Force. What I think I could do is, I think I could give the Committee a note on the reductions that have taken place over a term of years in the

Army in India and also a note stating the increase in the Air Force and members of the Committee and the Delegates must then draw their own conclusions from those figures.

Mr. M. B. Jayaker.

8590. Is the Secretary of State's answer dependent on the assumption that bombing from the air continues?—Yes, it is.

Sir Abdur Rahim.

8591. May I make another suggestion, Secretary of State, that, if you could give us figures as regards the number of raids from the Frontier tribes during the last 10 or 15 years, in the Assembly a Committee had to go into that and from the figures it appeared that there has been a considerable decline owing to the new policy that has been adopted with regard to the Frontier tribes. I think it is called peaceful penetration and also a civilising policy. I think the figures might be available and I think they might be of some use to us in considering the needs of military expenditure in connection with the Frontier?—I should be rather sorry if this Committee went into details of that kind. If you come to Frontier raids, it is very difficult to say what is a raid and what is not, and whether a decline in the number of raids in a particular area is due to the building of roads, or whether it is due to the use of air power, or whether it is due to this, that, or the other cause. I would have thought that information of that kind was really not necessary to us here who are considering the bigger constitutional issues.

Lieut.-Colonel Sir H. Gidney.

8592. Is it not a fact that there has been a considerable reduction in the Military expenditure at Aden since the Air Force was increased there?—That is so, but, with all my great affection for the Air Force, I must not be drawn here into a controversy with the other Military Authorities, and, on that account I have said I am ready to give the numbers of units both in the Army and in the Air Force, and to let every Member draw his own conclusions from those numbers.

Sir Purshotamdas Thakurdas.

8593. May I refer you to the same Committee report, page 58, where, at the end they have this paragraph which, with your permission, my Lord, I propose to read: "We do not, however, consider that the Government of India should be satisfied with a Military budget of Rs. 57 crores, and we recommend that a close watch be kept on the details of Military expenditure with the object of bringing about a progressive reduction in the future. Should a further fall in prices take place, we consider that it may be possible, after a few years, to reduce the Military budget to a sum not exceeding Rs. 50 crores, although the Commander-in-Chief does not subscribe to this opinion. Even this is more, in our opinion, than the taxpayer in India should be called upon to pay, and, though revenue may increase, through a revival of trade, there would, we think, still be no justification for not keeping a strict eye on Military expenditure with a view to its further reduction." The fall in prices the Committee had in mind was not anything like the fall in prices which has actually taken place between 1922 and 1931, and I wish to put it to the Secretary of State whether he does not think that even on the conservative opinion of the Incheape Committee in this connection a much lower Military expenditure to-day is called for than the 46½ crores, not to add on the other two items which were passed last March?—Sir Purshotamdas is really asking a great deal of the Military Authorities in India. Here the Committee, of which I think he is a distinguished Member—

8504. I was a Member?—held out as their ideal a Military budget of 50 crores. Our budget to-day in spite of all the difficulties with which we have been faced is 46 crores. I think that is a very great achievement, and, if Members of the Committee and the Delegates will look at the percentage of the reduction, namely, from 57 to 46 crores, I am sure, as I said the other day, there is no other country in the world that can point to so great a percentage reduction as that. Further than that, whilst I am anxious to keep down the expenditure to the lowest legitimate minimum we have to remember this, that

the needs of Indian Defence are absolute and not relative, and that the worst possible policy in the world would be to have the appearance of a system of defence in India upon which, presumably, you would be spending quite a lot of money, and that that system of Defence would be ineffective. I should have thought that this great reduction from £7 to 46 crores in this very short space of time points to the great care with which both the Military and the Civil Authorities have approached this question, and illustrates their determination to make every conceivable economy that they legitimately can.

8595. I am afraid Sir Samuel Hoare has rather overlooked the very important point which I included in my question, namely, the fall in prices. I was a member of that Committee. Unfortunately Lord Inchcape is no more. If he were alive (he was Chairman of the Committee) I could have produced from him a letter saying that the fall in prices to which he refers there was no more than 10 or 15 points. No one then foresaw that there would be a fall in prices to the extent of over 100, and when there has been a fall in prices of over 33 per cent. of the basis on which this paragraph is written, the result is not only one upon which one cannot congratulate the Military Authorities, or anyone else in India, but it is one which leaves the public in India with a very sore grievance?—I believe if you and your Committee had been told in the year in which you were sitting that the Military Budget could be got down to 46 crores in 1933-34, even with all the fall in prices to which we have been subjected, you would have thrown your hats up in the air, and would have been delighted.

8596. It is not a matter of such great delight. I will refer Sir Samuel to the papers of the Retrenchment Committee which are in two boxes in the Home Department of the Government of India, they are not accessible to me or any non-official but they would be accessible to him. In the first draft he will find the figure mentioned was that over which he thinks I would have thrown my hat in the air. Nothing of the sort. It was subsequently altered and another figure added. You indicated

both in Sir Malcolm Hailey's Memorandum, and in your speech, the idea, of appointing a Committee in order to consider in detail the allocation between the Provinces and the Centre of Revenue and expenditure. I take it that Committee will be appointed by you?—I think so, but I am open to suggestions about it. That is my present view.

8597. I have no suggestion to make except to ask whether you would attach as much importance to representation from Provinces or representation from men who are interested neither in Provinces nor in the Central Government at the moment, and still who are not back numbers in the sense of being retired, and not being in touch with affairs in India. It must be somebody who can weigh the scales evenly between the Centre and the Provinces, and who will command the confidence of the people?—I think certainly, without being precise as to the constitution of the Committee, it should be an impartial body and an impartial body to which the Provinces could make their representations. I think also it should be quite a small body, and I should hope it would be a body which, having most of the data readily available, should not take a very long time.

8598. I only wanted to indicate one or two considerations which struck me as being very important to be borne in mind in connection with this Committee. I agree with the other requirements mentioned by the Secretary of State. The Reserve Bank Committee Report and the Railway Board Report are not available for us to-day, therefore I shall not ask any questions about them. There is one question I should like to ask, because it is a question which is constitutional and not purely financial. You have said that the Reserve Bank should be free from political influence. I wish to ask whether you remember that in the Financial Safeguards Committee Report of the Third Round Table Conference, paragraph 4, page 37, the actual word used is "that efforts should be made to create, on sure foundations and free from any political influence"—the word "any" there does not mean merely political influence, and the significance of the word "any" is political influence

both in India and in England. Would you agree with that?—Yes.

8599. I particularly stress this because I find there is a tendency rather to overlook the word "any" and only to think of political influence in India. Would you consider that something beyond that was intended and indicated in the draft Report?—We intended in the Committee, and I contemplate now, that the Reserve Bank should be free, so far as we can make it, of any political influence.

8600. On both sides of the seas?—On both sides of the seas.

Sir *Purshotamdas Thakurdas*.] I had a few questions to ask regarding the debt position of India, but I find Major Attlee has dealt with that question so admirably that I will not take up any time of the Committee in dealing with them.

*Mr. M. R. Jayaker.*

8601. The present position about the Army estimates is that they are dealt with by the Governor General in Council which means he has the benefit of consultation with three Indian Members?—Yes.

8602. And according to the proposals made in the White Paper, I find no constitutional position which gives such an opportunity of consulting Indian opinion in the new Constitution on Army estimates, excepting that you refer to the Instrument of Instructions, pointing out the desirability of the two branches of the Government working in harmony?—Yes.

8603. But in that connection, having regard to the great importance of the question, how does the proposal appeal to you which Sir Tej Bahadur Sapru and myself made in our Memorandum which we submitted for your consideration at the end of the Third Round Table Conference of appointing as an Army Member a non-official Indian, the Viceroy to have the widest choice in that connection, and the Army Member to be solely responsible to the Viceroy, and the Viceroy's view in no way to be affected, nor his freedom to be in any way minimised? How does that proposal appeal to you?—I have always felt that it is better to leave the choice entirely free.

I know the arguments that can be used upon both sides but I came to the view, and so also did a good many other Members at the last Round Table Conference come to the same view, that we should leave the choice of the Viceroy completely free as to his own advisers and his own staff.

8604. Have you considered this possibility that in the new Legislature there will be a number of men—I am not saying Indians because there may be non-Indians too, especially those who come from the States—who will have considerable experience of the management of the Army; therefore if you had the provision which we had in mind you would be providing the Viceroy with an expert person who has considerable experience of managing the Army, and who will serve as a nexus between the Legislature and this Reserved Department of the Army?—That may be so, but at the same time I do feel that it is much the best to leave the Viceroy with a completely free hand.

8605. Would you go to the extent of stating in the Instrument of Instructions a predilection for selecting a non-official?—No; I do not think I should. I have argued this question at some length in the past, and I have not changed my view, namely, that in a responsibility of this kind covering Defence it is essential that the man who is responsible should have a free and unrestricted choice.

8606. I was asking this question, because your answer No. 6634 which you gave some days ago expressed sentiments with which we Indians completely agree, namely, that you are looking forward to an arrangement when a greater and greater attempt will be made to draw the Legislature into a position of good will and understanding with regard to the Army Department. Do you remember those answers which you gave?—Yes.

8607. Do not you think that if that is the Indian view it is more likely to be achieved, and more speedily to be achieved, if you had any such arrangement as we proposed to you?—I think myself that arrangements of that kind must grow up as a matter of usage, and that to try and make them explicit in an Act of Parliament would be unwise, and might very well lead to friction

rather than co-operation. When I give this answer to Mr. Jayaker upon this particular point it does not mean that I am in any way modifying the answers that I gave the other day based upon my desire to see the closest co-operation possible between the two sides of Government. I really believe myself that you will get better co-operation if you leave the Viceroy's choice free than if you attempted to restrict it in some way that might very well create, rightly or wrongly, suspicions here, or suspicions in certain quarters, and would tie the Viceroy's hands.

8608. I will not press the question further. But now may I ask your attention to a few questions connected with the Reserve Bank, and let me say if you think those questions arise out of details which had better be considered after a Report is presented, you need not answer them. I am asking them because I am not sure at what stage the Report will come before this Committee, or whether I shall be here on that occasion. What I want to ask your attention to is page 17 of the Introduction, paragraph 32. That paragraph says that the "Reserve Bank, free from political influence, will have been set up by Indian legislation, and be already successfully operating". Now what are the tests by which you will judge that the Reserve Bank will be successfully operating? I am asking this question because in the case of an ordinary bank the test would ordinarily be the balance sheets, the deposits and reserves, and so on. *Ex hypothesi*, these cannot be the test with regard to a Reserve Bank, so what will be the test by which you will judge that the Reserve Bank which you have in view in paragraph 32 is already successfully operating?—I would prefer to deal with these questions as a whole. If Mr. Jayaker would agree, I think that would be the best course. If Mr. Jayaker is not here when we discuss these questions, I would send him a full answer upon a point of that kind.

Mr. M. R. Jayaker.] Then your answer would be the same on the four conditions in paragraph 32.

Sir Purshotamdas Thakurdas.] Will Mr. Jayaker mind if I just say this, that the Reserve Bank Committee Report does not deal with this question at

all. It is a matter as to how His Majesty's Government will judge whether it is successfully operating or not. I just wanted to bring that out.

Witness.] I am quite aware of that fact. At the same time, I think it is very much a part of the question, and I would have preferred a much more concentrated discussion upon it, if we can have it.

Mr. M. R. Jayaker.

8609. I leave it entirely to the Secretary of State. If you think it is better that these questions should be answered after the Report is out, I will not press it. Then the same will apply, I suppose, to the last five lines of paragraph 32, namely, the Budgetary position being assured and short term debts. I had a few questions to put, but if you think they should be reserved, I will not press them?—I do not know what you think, my Lord Chairman. I think it would be better really, to take all these Reserve Bank questions together.

8610. Very well. Then I will not ask these questions, my Lord Chairman. Then Proposal 147, at page 76: "The trustee status of existing India sterling loans will be maintained and will be extended to future sterling Federal loans". May I know what will be the procedure as regards the raising of sterling loans in future. Will they be raised by the Secretary of State or an agent of the Government of India, like the High Commissioner, or some such functionary?—Mr. Jayaker remembers that that is a question that we have discussed a good deal in the past, and upon which there are two definite opinions, one opinion being that India, anyhow in the early years of the Constitution, is more likely to get cheaper rates of money if no change is made in the name under which the loans are raised; the other being, that when a responsible Government is set up in India, it would be inappropriate and almost impossible for the Secretary of State to continue to give his name to the raising of the loans. Upon the whole, the expert view turns in the direction of the second alternative, namely, that it would be difficult after the Constitution is actually set up for the Secretary of State to go on raising loans in his name in London. But it

is a difficult question, and it is a question upon which my advisers and I would welcome the views of our colleagues in the Committee and in the Delegation.

8611. But will that condition apply if India were to raise loans elsewhere than in the British Isles?—I think it would apply still more. It would strengthen very much the second alternative course, namely, that the Secretary of State would find it very difficult to take any kind of responsibility for loans of that sort.

*Sir Purshotamdas Thakurdas.*

8612. May I ask a question arising out of that?—Does the Secretary of State think that it would be inconvenient to leave his matter to be decided by the Federal Government when the question arises and the necessity arises, or does he propose to make a statutory provision about this in the Bill?—I think myself we shall have to make a statutory provision.

8613. That India can raise no loan outside, except as a trustee security here?—No, I was thinking of the other point, as to the form in which the loans are raised, whether in the name of the Secretary of State, or whether in the name of the Federal Government. Obviously, in a question of that kind the Treasury and His Majesty's Government here are very much interested. There certainly would have to be a statutory provision, so far as I understand the position now, in the Act stating what is to be the future after the initiation of the Constitution.

8614. Would it not do to leave it permissible to the Secretary of State to put his signature to the loan here, if the Federal Government are agreeable to it, or must India be committed now for whatever the period of the Reforms be?—It is very difficult. Surely, Sir Purshotamdas will see the difficulty at once. It is very difficult for the Secretary of State to give his name to a future loan for loan for which he is not responsible.

8615. I fully see that, and that is why I am asking, need it be made compulsory on the future loans of India in the London market that they must be issued through the Secretary of State and not direct by the Federal Government, if they think fit to do the latter?—My

argument is all tending to show that I agree with Sir Purshotamdas's view, namely, that I do see grave difficulties in the way of the Secretary of State giving his name in the future to any loan for which it is not responsible.

*Chairman.*] I am very sorry to have to press the Meeting, but the position is that the Secretary of State will have to leave the Chair at half-past four, and at quarter-past four I intend to turn, at any rate, for a few minutes, to another matter, which I must deal with before we rise to-night.

*Marquess of Reading.*

8616. May I just say one word about that only. The Secretary of State's view just expressed as to the second alternative, is not intended by him to be final, I understand?—No. Because it is not final, I ask the Members of the Committee and the Delegates to think over what is a very difficult question.

*Sir Purshotamdas Thakurdas.*] I ventured to interrupt only because I felt that, as far as we are concerned, this was about the last opportunity we should have to express our views or to get the Secretary of State's intentions before the Bill was proceeded with. That was my only reason for asking.

*Mr. M. R. Jayaker.*

8617. Then in Proposal 39, at page 46, you require the previous assent of the Governor-General to any legislation dealing with coinage and exchange?—Yes.

8618. You remember, Sir Samuel, that this condition was agreed to, if at all, at a stage of the Round Table Conference, when it was considered that some temporary arrangements should be made pending the foundation of the Reserve Bank, and one of those temporary arrangements to which some part of the Indian opinion was agreed was, pending the foundation of the Reserve Bank, legislation dealing with coinage and exchange would require the prior assent of the Viceroy. Do you remember that stage, Sir Samuel?—Yes, I remember the stage.

8619. Having regard to the fact that you have now made the foundation of the Reserve Bank as a precedent condition to the coming in of Federation,

and having further regard to the fact that under Proposal 119, at page 69, the vetoing power is in the Governor-General and also His Majesty the King, do you think there is any necessity for requiring the previous sanction of the Governor-General for legislation dealing with coinage and current exchange ?

—Yes, I think it is necessary to have this power. Mr. Jayaker reminds me of the previous discussions on the subject, and that we had some quite long discussions upon this particular point. The previous sanction is necessary, in my view, mainly to avoid speculation and a great slump in the exchange or a great boom in the exchange, as the result of a Bill being introduced.

8620. But will not the same disturbance in the money market result from even a resolution moved in the Central Government affecting the ratio ?—I would have thought not. I would have thought a Bill would have been taken much more seriously than a Private Member's Resolution.

8621. You do not think that the power of vetoing would be enough for all practical purposes ?—No ; we have always attached a great deal of importance to this power in the interests of financial stability.

8622. Then the last question I wish to ask the Secretary of State is with reference to the reply which he gave to Sir Joseph Nall as regards the fiscal convention. I suppose the Secretary of State referred to what is known in the Indian Legislature as a convention which arises out of the following facts : That when the Governor-General in Council and the Legislature are agreed, the Secretary of State does not interfere. Is that what the Secretary of State had in view ?—Yes. My answer to Sir Joseph Nall meant that the practice will continue under which the British Government do not intervene in fiscal questions in India. Obviously, under the new Constitution, what is now a convention might have to take a more precise form. I fully realise the necessity of that possibility. As to the precise form that it would take, I suggest that we should consider it when we come to deal in rather greater detail with these fiscal questions.

8623. What I was wanting to know was : Under the new Constitution the

Constitutional position will be very different ?—The Constitutional position obviously will be different, because there will be a responsible Government, yes.

Mr. N. M. Joshi.

8624. May I ask one or two questions, my Lord Chairman ? Secretary of State, you know that there are some subjects of concurrent jurisdiction, and, as regards those subjects, the responsibility lies both upon the Federal Government and the Provincial Governments. I want to ask you whether as regards these subjects of concurrent jurisdiction, subventions from the Federal Government to the Provincial Governments will not be found to be necessary, and sometimes a very suitable method of adjustment between the powers of the Federal Government and the Provincial Governments ?—Will you give me an instance, Mr. Joshi ?

8625. I will give you an instance. Labour Welfare is a subject of concurrent jurisdiction ?—Yes.

8626. As regards that subject, the responsibility for finding money is a responsibility both of the Provincial Governments and of the Federal Government. In a case of this kind will not the Federal Government have a right to give a subvention to the Provincial Governments if the Provincial Governments undertake duties which the Federal Government should have themselves undertaken ?—Yes ; there is nothing at all in the proposals to prevent that.

8627. Subventions could be given by the Federal Government to Provincial Governments on such subjects ?—If they wish to do so.

8628. Now I want to ask you one question about the Public Accounts Committee. I do not see any reference in the White Paper to the Public Accounts Committee. I want to know whether you propose to provide for that in the Constitution when you consider the details of the Constitution ?—No. We purposely do not make provision in the Constitution for any committee of the Legislature. We feel that we really should be trespassing upon the privileges and the powers of the Legislature in bringing questions of



that kind into an Act of Parliament. The Legislature will be free to set up any Committees that it wishes to set up. I should personally be very much surprised if they did not continue to set up a Public Accounts Committee.

8629. May I ask you one further question on this point? Under the present Constitution the Public Accounts Committee also considers the report of the Auditor-General on what are called the Reserved Subjects, such as Defence. Will the Public Accounts Committee appointed by the future Legislature have a right to consider the report of the Auditor-General on the Reserved Subjects?—I do not see myself why the Public Accounts Committee should not have an opportunity of considering the accounts. It would consider them purely and only in an advisory capacity.

8630. As regards the position of the Auditor-General I want to ask a question. Under the present Constitution, the Auditor-General in India has no control over the accounts in Great Britain, and the accounts in Great Britain are audited by a separate Auditor-General. I want to know what you propose to do in the future Constitution: Whether the Auditor-General in India will have control over the accounts both in India and in Great Britain?—I have not myself considered that point. I will think about it, and communicate with Mr. Joshi perhaps further about it later on.

8631. May I ask one question more about the Political Department which deals with the Indian States? As the responsibility for dealing with the Indian States will hereafter be transferred to the Viceroy and not to the Governor-General at the head of the Federal Government, will the finances for maintaining the Political Department be found either by the States or by the Crown, or will they fall upon the Federal Government?—We have always assumed that they will fall upon the Federal Government. They were one of the inevitable charges upon the Government of India, and we have always felt that the right course was that they should be a non-votable item in the Federal budget.

8632. My question is this, Secretary of State. I quite realise that the item

is a non-votable one, but the item of expenditure will have nothing to do with the Constitution itself. The Viceroy, not as the head of the Federal Government, but as the representative of the Crown, will have relations with the States. Up to this time the case has been different. The Governor-General in Council was the head of the Government of India, and he had dealings with the Indian States, but hereafter the Viceroy, as the representative of the British Crown and not as head of the Federal Government, will have relations with the States. I therefore want to know whether there is no change in the position and, in consequence of the change, the financial burdens ought not to be transferred now?—No; we still feel that that is a legitimate charge upon the Federal budget.

*Dr. B. R. Ambedkar.*

8633. I would like to ask one question about the statement made by Sir Akbar Hydari on the application of paragraph 141. You said yesterday, Secretary of State, in making your brief observations on that statement that you were glad that the States had accepted, at a certain point, to bear the burden of the Federal Government?—Yes.

8634. What I would like to know is this—you can give the answer now, or, if you like to refer to it later I have no objection—whether you agree that the stage which has been described by Sir Akbar Hydari is the stage at which the States should begin to bear the burden of the Federation? He has, as you know, described certain stages through which the Federal finance must go before the States could be called upon to bear their share?—Yes.

*Sir Akbar Hydari.*

8635. Additional burden?—There are really three burdens. There was first of all the burden of indirect taxation that they undertake from the start; secondly, there was the burden of the Corporation Tax, or the equivalent of the Corporation Tax that they undertake after a definite term of years; and, thirdly, there was the surtax that they undertake in the event of an emergency.

Dr. B. R. Ambedkar.

8636. I thought he laid down certain conditions?—He laid down certain conditions—Sir Akbar will correct me if I am wrong—for the third of these burdens, namely, the surtax.

8637. I wanted to know whether you agree that those were the appropriate conditions under which the Federation will resolve to surcharge?—I think so. I do not want to tie myself down to the exact words, but I think, generally, that seems to me to be a fair basis of an arrangement.

8638. The next question I want to put to you, arising out of that, is this: that if that position is maintained or even the position as it is under proposal 141 is maintained, would it not be the fact that the Federation will have to carry on its finances entirely on the basis of indirect taxation?—Not entirely on the basis of indirect taxation.

8639. To a very large extent?—Not entirely on the basis of indirect taxation. Obviously, to a large extent. Indirect taxation will then, as it does now, play a very prominent part in the Indian revenue.

8640. What I want to put to you is this, Sir Samuel Hoare, that it will be more so under the Federation than it is now, for the simple reason that the British Indians would not consent to direct taxation, because the States will not consent, and, consequently both of them would rather go in for indirect taxation to be borne by both apart, rather than agree to direct taxation, which would be borne by British India alone. From that point of view indirect taxation would be more and more forced upon them than is now the case?—From the other point of view, I can imagine the States very often on the side of the less indirect taxation.

8641. That is because they do not have their finger in the pie now. Would it be the same thing afterwards when, if they are opposed to indirect taxation they have to bear the brunt of the taxation?—Dr. Ambedkar will also remember in this triangle of forces that the Provinces will have an interest in direct taxation, as they have a share in it.

8642. Yes, that may be so, but the Province also will see that the Federa-

tion is not entirely a charge on Indian Revenue raised in British-India. It is a pure matter of speculation, but I want to pay attention to what would be the drift of the finance under the Federation. If I may say so, the Federation would entirely have to build a tariff wall round itself in order to carry on?—Dr. Ambedkar says it is a subject of speculation. I am inclined to agree with him, but I am not inclined, having assumed it is a subject of speculation, then to prophesy exactly what is going to happen.

8643. I will leave it at that. The next question I would like to ask of Sir Samuel Hoare arising out of the same proposal, 141, is this: You said that the States will contribute an equivalent amount to the Federal Revenues on a sum to be assessed on a prescribed basis. Of course, you have explained this morning how the word "prescribed" is used, and I am not going to ask you any questions upon that, but what I would like to ask you is this. Is there any provision made in the White Paper to see that the sum assessed on this prescribed basis, which becomes payable by a particular State, will be ultimately paid to the Federation?—It would then mean a default would it not, on the part of a State?

8644. Yes, supposing the State does not pay. I am assuming only one case now, for the moment?—The Viceroy then, I assume, could intervene.

8645. The Viceroy, as you know, is outside the Federal Constitution?—If Dr. Ambedkar will look at paragraph 129, he will see there: "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled."

8646. Yes. What I want to say is this. Paragraph 129, if I may make the distinction, only gives the Governor-General the power to give a direction. It does not give the Governor-General the power to take remedial measures, if the directions are not obeyed?—The Act nowhere provides explicit sanctions in situations of that kind either for the Provinces or for the States.

8647. For the Provinces it does, because the Governor has a special responsibility to see that the orders of the Governor-General are carried out and obeyed, and to that extent he will be directly under the control of the Governor-General, and so provision does there exist, so far as the relations between the Provinces and the Centre are concerned, that his orders will be carried out?—I think there is just the same sanction, is there not, with the Governor-General and the States.

8648. No, if I may say so, as you explained on the Memorandum on the Instrument of Instructions if he disobeyed, the Governor could be recalled. There is no such provision in the relations between the States and the Centre?—In each case the responsibility is the responsibility of the Governor-General at his discretion, that is to say, subject to his instructions from here.

Dr. Ambedkar.] But my point is that just as the Governor would be subject to the power of the Governor-General with respect to the administration of the Province, the ruler of a State is not subject to the directions of the Governor-General beyond, I suppose, the administration of such matters which appertain to the Federation; that is with the Viceroy.

Mr. Zafrulla Khan.

8649. Would not the paramountcy powers apply?—That is exactly what I was going to say. There is in the States the field of paramountcy.

Dr. B. R. Ambedkar.

8650. But, as you said, the paramountcy will be assigned to the Viceroy, and not to the Governor-General?—Yes, but nevertheless the result will be the same.

Mr. Zafrulla Khan.] The Governor-General will formally make a request to the Viceroy and the Viceroy will thereupon act.

Dr. B. R. Ambedkar.] May I ask another question arising out of the same. There is another aspect of it. It is assumed that the States that would be liable to make this contribution would be solvent at the time when the contribution is called for. Is there any provision in the White Paper to see that

the Governor-General whose finances would, to some extent, be dependent upon these contributions coming from the Indian States, has power to see that these contributories will be solvent on the days when the contributions fall due.

Rao Bahadur Sir Kishnama Chari.] What is the provision with regard to the Provinces? Is there any such provision with regard to the Provinces?

Dr. B. R. Ambedkar.] Yes, the Governor can certify that a certain amount is due to the Federation and shall be paid, and it will be paid.

Mr. Zafrulla Khan.] May I recall a suggestion I made during the preliminary discussions here that the Viceroy might ask the States who are units of the Federation to submit for his information every audited copies of their accounts.

Dr. B. R. Ambedkar.

8651. There is one more point, and I think the Secretary of State may give a combined answer. If you will refer to paragraph 146 dealing with the borrowing powers you will see there it is provided that the Federation may borrow upon the security of Federal revenues. The contributions to be made under Proposal 141 will be part of the Federal revenues which will be the security for the loans which the Federation will raise. Do you think it would sufficiently add to the credit of the Federation if part of the revenues which the Federation can call upon in order to give security for the Federal loans are left in this uncertain state both as to capacity to pay and the willingness to pay?—I would have thought really that the contingency Dr. Ambedkar is contemplating is a contingency that is not very likely to arise often, and that, if it does arise, it is not the kind of contingency that is going substantially to alter the credit of the Federation. After all, these amounts taken altogether are very small amounts.

8652. I do not know what they would be?—And in the event of a single default—

8653. I hope they will not be very small?—I cannot imagine that that would make much difference to the credit of India.

Sir Akbar Hydari.] Is not the financial position of the States, through the exercise of paramountcy, in a much better condition than that of the Provinces through the exercise of the special responsibilities of the Governor?

Dr. B. R. Ambedkar.] I thought the statement made by Sir Mirza Ismail yesterday disclosed a most pathetic state of affairs.

Sir Akbar Hydari.] It was still a balanced budget by which he could pay up his tribute all right.

Mr. Zafrulla Khan.

8654. My impression was that the Secretary of State was going to tell us what would happen if there were a series of defaults?—I think I would say in the case of one default, to say nothing of a series of defaults, the Viceroy would have the power of intervening under his powers of paramountcy.

Sir Manubhai N. Mehta.] May I draw your attention to Proposal 129. It provides for it. The Governor-General will be empowered.

Sir Hubert Carr.

8655. There are one or two questions I wish to ask regarding the Provinces. It is with reference to Proposal 139 under which a share of the income-tax to be assigned to the Provinces will in all probability be reduced to extinction during the first few years: the fact that there is no income-tax to be assigned in the first year or two means that the Industrial provinces will be paying the whole cost of the Federation and the agricultural Provinces will not be taking their fair share. I was hoping that the Secretary of State would give some indication that the investigation which is taking place according to paragraph 57 will go into the question of the taxable capacity of the Provinces, and that the retention of income-tax by the Centre should be based on the taxable capacity of the Provinces rather than in the method suggested. May I remind you that the Percy Report, Section 113, recommended taxable capacity as the fairest method of emergency contributions, and I would suggest if it is the fairest method for that it is also the

fairest method for retention of income-tax from the different Provinces?—We have no provision either to arrange for that, or to preclude it. I will take into account what Sir Hubert Carr has said, but, offhand, I see a good many difficulties in the way of his suggestion, but, as I say, there is nothing in the White Paper either to say that we shall do it upon one basis, or that we shall not do it upon one basis.

8656. I was rather led to ask the question by the Percy Report, and the idea that probably the White Paper proposals were following it. That is what I had largely in mind. But, taking that matter into consideration, would you also consider the distribution of income tax, that it should be on a uniform percentage to the Provinces. I mean that those Provinces which are in deficit it is proposed in the Percy Report should be covered by the surpluses of the other Provinces. I would suggest that deficit provinces should be assisted from the general funds, and not merely from income-tax receipts which, again, react against the industrial Provinces?—There again, so far as the White Paper proposals are concerned, that field is open, and obviously we shall have to consider points of that kind before we are precise as to the way in which the arrangements should be made.

8657. Without putting forward many other proposals, should this not appeal to you, there is a third which I would like you to consider, and that is distributing the income-tax according to the origin of the tax?—I should like to think about all these proposals. What I am anxious to avoid is an endless wrangle between one province and another, raking up all sorts of trouble, and delaying any constitutional changes for years and years.

8658. It was only your statement this morning that the prescribed basis will be once for all, that made me hope you will give this matter consideration?—Yes.

8659. I will pass on, if I may, to the question of Proposal 137. There it deals with a subject which has been mentioned before, the jute duty, and it arranges that at least 50 per cent. of the net

revenue from the duty shall be given to the Province. That is, it seems to me, almost settling that 50 per cent. of the duty shall always remain with the Centre, because, with 10 Provinces out of 11 considering the distribution of that 50 per cent., seeing that 10 out of 11 will be beneficiaries by keeping it, and the eleventh the only loser, it is very unlikely that anything more than 50 per cent. which is compulsory will ever be passed over to the producing Provinces. I would therefore invite your consideration to the proposal that the jute duty should be accepted as a Provincial source of revenue, half of which may be retained by the Centre during this period of stringency. I need not go into the question of the fairness of the claim that the jute duty, which is a duty on the chief agricultural crop, should accrue to the benefit of a Province?—You cannot generalise upon questions of this kind. If you do you then have troubles in other Provinces. The very argument that Sir Hubert Carr has used for jute in Bengal, I suppose, might be used by Assam for petrol and tea, and so it goes on. We think we are doing something very substantial for Bengal in the provision that we are making for the 50 per cent. of the jute duty, and I could not to-day go any further than I have gone in what I have said about Bengal.

8660. I do not wish to carry the argument further, but I would not like to accept petrol as being on the same basis as an agricultural crop?—Perhaps tea would have been a better analogy.

8661. Tea I would be glad to accept because that was a war measure and was in the list. Turning to another subject, may I refer to the question of the economy which has been suggested in not setting up Second Chambers in the Provinces until financial conditions are more favourable? I think Lord Reading mentioned it on the 30th of June and put it rather on the basis of the Supreme Court. As you know, many have looked upon Second Chambers in the Provinces as an essential safeguard in the administration of the Provinces and to postpone a Second Chamber on account of finance does not appeal to us, and I would ask you to take into consideration that it is more a matter of holding up autonomy

until the Province can afford a full and complete Legislature than to give an incomplete Legislature, as we look upon it, in order to meet the financial requirements. Would you take that into your consideration?—I will take note of what Sir Hubert Carr has just said, but I hope it will come to that kind of dilemma. I hope it will be possible to set going Provincial autonomy and to set it going with those effective institutions in the various Provinces.

Sir Hubert Carr.] There is only one other point, if I may make it, over that, so as not to have my proposals all on one side: I think economy might be found by reducing the size of the Legislatures. For instance, in Bengal I believe from inquiries I have made there would be very little objection in any community to reducing the Legislature from, say, 250 in the Lower House and 65 in the Upper House, to 200 in the Lower House and 50 in the Upper House. No alteration would be made in the communal percentages and it would lead to a substantial reduction in expenditure.

Sir A. P. Patro.

8662. My Lord, with a view to clearing up the misunderstanding that prevails in some Provinces in India, after the statement of the Secretary of State about the finances and the publication of the finance statement, may I ask the Secretary of State: Is it not a fact that most of these Provinces have their budgets balanced by cutting expenditure to the bone altogether? All those Provinces that have now balanced their budgets have now done so after cutting expenditure to the bone and after exploiting every possible source of revenue?—I think they have made very remarkable efforts for economising. I should like to pay a tribute to them, but I would never like to say that the last word has been said with any government anywhere in the matter of economy.

8663. May I draw your attention to Section 139 and paragraphs 57 and 58 of the Introduction? These proposals are intended to augment the existing revenue of the Provinces with a view to setting them on a firm basis for advancing Provincial autonomy?—Yes.

8664. May I take the answer which you have just given to Sir Purshotamdas Thakurdas's question to mean it will be possible to introduce Provincial autonomy immediately without fresh taxation? Am I correct in quoting your statement? I noted down here that you said it would be possible to introduce Provincial autonomy in the Provinces without fresh taxation?—If Sir A. P. Patro means the introduction of Provincial autonomy with the allocation of revenue set out in paragraph 139, then my answer could not be yes.

8665. My question is this. There is a good deal of misunderstanding, in fact misrepresentation, prevailing in the Provinces to-day?—Yes.

8666. It is necessary and desirable to clear up that atmosphere?—Yes.

8667. And, for that purpose, I want a definite answer as to whether it is possible to introduce Provincial autonomy in the Provinces without augmenting the revenue by fresh taxation, having Proposal 139 in mind?—I have no desire to make the initiation of Provincial autonomy dependent upon the exaction of new taxation, and I hoped that it would be possible to introduce Provincial autonomy without any fresh taxation. That was the answer I gave to Sir Purshotamdas Thakurdas just now. When you ask me whether here to-day, without any change in the finance in India, we could at once introduce Provincial autonomy that is a more difficult question, and I could not say either Yes or No to a question of that kind.

8668. In other words, there will not be any delay in introducing Provincial autonomy in the Provinces to begin with, after the Report of the Preliminary Committee, which you are going to appoint to investigate the financial condition of the Provinces?—I hope not, but, Sir Annepu nobody on earth can give a definite answer here and now to what will be the state of affairs in, say, a year's time. I hope not, and, with the information at present at my disposal, I see no reason why that should not be the case, namely, that we should be in a position to go ahead with Provincial autonomy; but to-day I can-

not go further in being more explicit than that.

Sir Akbar Hydari.

8669. Will you kindly refer to Proposals 122—124, and 18 (e) and 70 (d)? Broadly speaking, these are safeguards against commercial discrimination in the administrative and legislative spheres so far as British India is concerned. Similarly, Proposals 18 (f) and 70 (e) are intended to safeguard the rights of the States. I should like to know whether it is intended that the word "rights" should be taken in its broad meaning and cover their "vital interests." I am asking this question because in other portions of the same paragraph you have used both the words "rights" and "interests." For example, would you agree that action inconsistent with what I may call a State's fundamental "right to live", or prejudicing its enterprise and so forth, should be action that the Governor-General or the Governor, as the case may be, could prevent?—Yes, I think I should certainly say Yes to a question of that kind. If either the Federal Government or a Provincial Government took such action as to endanger the economic existence of a State, to take that particular instance, I think then the Governor-General certainly should have the right and the power to intervene.

8670. Would you kindly refer to proposals 102 and 52? This was a question which I asked before. You will see that in Proposal 102 there is no provision corresponding to Proposal 52 (b) (i). Would it not be desirable to include such a provision?—To cover the kind of contingency that you have just described?

8671. Yes?—I think Sir Akbar has pointed to an omission in the White Paper and I think there ought to be a paragraph of that kind included.

8672. Will you please refer to Proposal 117? Is it proposed that a body of existing British Indian Acts should be made federal when Federation is started? If so, I take it that each acceding State will be informed of the provisions of any State law existing at the time which is considered by the

Crown to be in conflict with the provisions of any Federal Act?—The point is new to me, offhand, but I think certainly there must obviously be an inquiry at the time of the accession of a State that would go to show whether the State laws and the federal laws conform or not, and the State must know clearly what is its position as far as its State laws are concerned.

8673. Will you please refer to Proposal 119? As it stands, this paragraph suggests that the Federal Legislature might repeal or amend the Constitution Act itself with the Governor-General's consent, inasmuch as it is an "Act of Parliament extending to British India." I take it that is not the intention?—No; that is not the intention, and Sir Akbar Hydari will see that the position is safeguarded under paragraph 110.

*Marquess of Salisbury.*

8674. The Secretary of State will notice that it is merely a matter of drafting, but there is an exception which might be read to go much further than is intended: "(except, in the case of the last-mentioned Act, in so far as that Act itself provides otherwise)"?—Yes; and what we had in mind by inserting that bracket was the kind of case that I mentioned the other day, namely, the case whether, after a period to be set out in the Constitution Act, it should be permissible to the Federal Government to alter the franchise. That is a question that we have got to discuss. That was the kind of question that we had in mind.

*Sir Akbar Hydari.*

8675. Will you please refer to Proposal 153. Whilst it is, of course, essential that Judges of the Federal Court should enjoy the highest standing and prestige, I take it, that provision will be made so as not to debar the appointment of similar men from the States?—I think that is certainly a point which we ought to consider.

8676. I assume that any matter involving the interpretation of an Instrument of Accession "or the determination of any rights, or obligations arising thereunder," is intended to be covered by Proposal 155 (i). If I am right, this

might, perhaps, be made clearer?—Yes, I think, generally speaking, that is so.

*Mr. M. R. Jayaker.*

8677. I did not depend upon a question that comes up, because I can imagine a question which will be considered by the Federal Court in which an interpretation of the Instruments of Accession may become necessary?—I should like to consider a point of that kind. I think that is one of the more technical points that we must discuss when we come to discuss the question of the Federal Court.

*Mr. M. R. Jayaker.]* The White Paper cannot take up the position absolutely that in no case will the Instrument of Accession be governed by the interpretation of the Federal Court.

*Rao Bahadur Sir Krishnama Chari.]* Sir Akbar Hydari wants the Instrument of Accession to be included.

*Witness.]* Anyhow, my general answer to Sir Akbar is the answer that I have given. The more detailed answer I will reserve for the time when we discuss the Federal Court.

*Sir Akbar Hydari.*

8678. Now in Proposal 161, the term "justiciable" is used. It has been admitted that it is indefinite and its meaning is the subject of controversy. Would it not be preferable to omit the word "justiciable" as the matter must be, without this word, of such a nature that it is expedient to obtain the opinion of the Court upon it?—I will certainly consider the suggestion. Sir Akbar will remember that the White Paper does not pretend to be a carefully drafted Act of Parliament.

8679. No. There was a great deal of controversy in India about the word "justiciable" with the Indian States. With regard to the retiring age for the Federal Court Judges, 62, I am not sure whether it is on the low side. If it were 65 years, then you would allow five years for the people who had retired from the Provincial Courts?—I will take Sir Akbar's suggestion into consideration.

*Chairman.*

S680. Secretary of State, I should like, if I may, to associate myself with the congratulations and the thanks which

you received from all over the Room this morning. I agree with every word that was said?—Thank you very much, my Lord Chairman.

*(The Witnesses are directed to withdraw.)*

Ordered, That this Committee be adjourned to Monday next at 10.30 o'clock.

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3rd October 1933.

Present :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Lord Middleton.  
Lord Hardinge of Penshurst.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lt.-Col. Sir H. Gidney.\*  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon'ble Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] My Lords and gentlemen, some of our friends of the Delegation have been far afield since we parted two months ago, although it only seems two days, and I feel quite certain that you would wish me to welcome them again to our counsels.

The proposal for to-day, subject to the approval of the Committee, is that the Secretary of State should give evidence on the Services, and I propose to follow the arrangement which we pursued on previous occasions of this kind, and to ask Lord Salisbury to commence the examination, and thereafter to invite Members of the Committee to examine

the Secretary of State, and, after that, Members of the Delegation.

Marquess of *Salisbury*.

11,210. The paragraphs with which we are dealing (the Chairman will correct me if I am wrong) are 176 to 201 and 119 to 121, the later paragraphs being taken first?—(Sir *Samuel Hoare*.) Yes. Paragraphs 119 to 121 are a different subject, are they not?

11,211. They are, but in the programme they are all printed together. However, you would rather I took them quite separately?—Yes, certainly. I

was assuming that we were going to discuss the question of Service rights.

11,212. Very well. I do not propose to ask a very great many questions, for the reason that a good deal of it has already been dealt with in our discussions, and probably the Secretary of State would not wish us to go all over it again, as, for example, paragraph 182, which deals with things like accruing rights, and so on. That has all been thoroughly discussed. Of course it is for the Committee to say whatever they like, but personally I have no questions to put upon that paragraph, and others. Paragraph 176 involves, does it not, the disappearance of the Secretary of State's Council?—It involves the disappearance of the Secretary of State's Council in its present corporate form.

11,213. Yes, but it is to be replaced by advisers?—Yes.

11,214. The advisers have no function except advice with one limitation, that in respect of appeals by the Civil Service, as I understand, and rules of the conditions of service, the Secretary of State will have to get the consent of the advisers for those?—Yes, that is so.

11,215. They have, as it were, absolute authority in the rules regulating the conditions of service, and with respect to appeals, but in all the rest they have nothing to do but to advise. I do not want to underrate advice for a moment. I only want to get it clear?—Yes.

11,216. The disappearance of the Secretary of State's Council does involve a change because (I speak with great diffidence) I understand the present Council of the Secretary of State have certain definite powers which will disappear?—The two main powers are with reference to the revenues of India. The power that they possess is a safeguard against the Secretary of State, or the British Parliament, exploiting the revenues of India. That is the first safeguard that they possess. The second safeguard is the safeguard to which you have already drawn attention, namely, in connection with Service rights.

11,217. But the Service rights power is to be continued in another form?—Yes.

11,218. But what does disappear is the control over finance?—Yes, as an in-

herent consequence of the changes that are being proposed under which the Federal Government and the Provincial Government would be responsible for their own finance within the terms of the White Paper.

11,219. I quite understand. One would naturally expect that that would happen. But the Secretary of State will agree that that does remove one safeguard about finance which at present exists?—It removes a safeguard in the interests of India; not a safeguard in the interests of the United Kingdom.

11,220. Certainly; but the Secretary of State would agree that that makes it all the more necessary that the other safeguards of finance should be carefully drawn?—I do not want to dispute what Lord Salisbury is saying, but I really do not quite see the connection between the two.

11,221. That is probably because I have put my question ignorantly. The Secretary of State said that the Council had authority over the revenues of India. But have they no authority over the expenditure in India?—Yes.

11,222. They have?—Yes.

*Sir Austen Chamberlain.*] May we get clear exactly what their authority is? *Marquess of Salisbury.*] Please.

*Sir Austen Chamberlain.*

11,223. I was under the impression—I may be wholly wrong—that their control was a control over expenditure, but not over the raising of revenue—that no money can be spent from Indian revenues without the approval of the Council of India?—Substantially that is so.

11,224. But that the control of raising of revenue is not necessarily a function of the Council of India?—That is so; and the appropriate clause in the Government of India Act is Clause 21 setting out those conditions.

*Marquess of Salisbury.*

11,225. Quite so. So that now we are going to get rid of the control over expenditure, so far as the Secretary of State's Council is concerned, it makes it all the more necessary that the other safeguards against undue expenditure in the White Paper should be carefully drawn because they are the only things

the people of India would have to rely upon?—Yes, I think that is so.

11,226. I do not want to press that any more. I take the Secretary of State to paragraph 183 of the White Paper, if I may, which prescribes that the appointments to the Indian Civil Service, the Indian Police, and the Ecclesiastical Department should be subject to the authority of the Secretary of State?—Yes.

11,227. I do not know whether the Secretary of State could, quite shortly, tell us what grades of the Police that would include?—I will ask Sir Malcolm Hailey to deal with a detailed question of that kind, if I may.

11,228. Please?—(Sir Malcolm Hailey.) It will deal with the grades going down to Superintendent of Police and Assistant Superintendent of Police who are all Members of the All-India Service.

Marquess of Reading.

11,229. Right down to Superintendents and Assistant Superintendents?—Superintendents and Assistant Superintendents of Police.

Marquess of Salisbury.

11,230. They will all be, as it were, protected (I do not want to use an invidious term) from any undue interference by the responsible Minister?—The ultimate disciplinary authority will be the Secretary of State.

11,231. Have you observed the difference of treatment under paragraph 186, of the Police, and under paragraph 190, which deals with other persons—“of all persons in the Federal and Provincial Services other than persons appointed by the Crown; by the Secretary of State in Council, or by the Secretary of State.” Paragraph 190 I understand would include the District Magistrates?—No, Sir.

11,232. Are the District Magistrates to be appointed by the Secretary of State?—The District Magistrates, if we continue the present arrangements of the Government of India Act, will be scheduled posts which must be filled from an All-India Service under the control of the Secretary of State.

11,233. So that that is protected and all their conditions of service are protected?—Yes.

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Lord Eustace Percy.

11,234. If I may be permitted to clear that up, are not District Magistracies now sometimes filled by Provincial Service personnel?—We have men promoted from the Provincial Service into listed posts, in which case they come under the control of the Secretary of State. There are a number of acting appointments and officiating appointments held by Provincial Service officers, but the posts of District Magistrate as such are scheduled and it is only for short periods that they can be filled without the sanction of the Secretary of State by members of a Service not under the control of the Secretary of State.

Marquess of Zetland.

11,235. On that point, might I just ask Sir Malcolm Hailey: Are not there a number of listed posts which are to be filled by Provincial Service officers—posts of District Magistrate, I mean; and in those cases they do not come under the control of the Secretary of State so far as their conditions of service are concerned, do they?—Our cadres contain provision for all District Magistrates posts on the cadre of the Indian Civil Service or listed posts which come under the control of the Secretary of State. There are cases, however, when there are not sufficient men on the cadre to fill the District Magistrates posts and they are filled in an officiating or temporary capacity by Provincial Service officers. To that extent they do not come under the Secretary of State.

Sir John Wardlaw-Milne.

11,236. Does that mean that when they become permanent appointments, they automatically come under the Secretary of State,—When they fill a listed post they become part of the Indian Civil Service cadre.

11,237. Whatever the origin of their service?—Whatever the origin of their service.

11,238. Is it the intention of the White Paper that that system should still continue, but that the control of the Secretary of State would depend upon the nature of the post and not upon the sort of appointment of a person to fill that

post ?—(Sir *Samuel Hoare*.) It is both in the White Paper.

11,239. It will still be both under the White Paper ?—Yes.

Marquess of *Reading*.

11,240. It is necessary, is it not, to be able to make appointments of that kind from the Provincial Services in case there is any sudden demand. You would not have sufficient officers, perhaps, at hand to fill them from the Indian Civil Service or the scheduled list. You must take the men from the Provincial Service for the time being ?—(Sir *Malcolm Hailey*.) That is so.

11,241. That is the reason why you do get a number of Magistrates appointed. There may be cases in which there may be an extra demand ?—Yes.

11,242. In the same way an officiating Magistrate is appointed. He does not fall under the Secretary of State in the listed or scheduled posts unless from that at any time he becomes a permanent District Magistrate. That is the position ?—That is the position. (Sir *Samuel Hoare*.) The cases are covered by Clause 188 on page 83 of the White Paper. (Sir *Malcolm Hailey*.) That provides that, although not a Member of the Indian Civil Service, if you have held what is known as an Indian Civil Service post you may be given these rights by the Secretary of State.

Marquess of *Salisbury*.

11,243. That gives the power to the Secretary of State to assimilate the position of these temporary gentlemen as if they were permanent people ?—(Sir *Samuel Hoare*.) Yes.

Lieut.-Colonel Sir *H. Gidney*.

11,244. Do you mean that if a Deputy Collector is appointed to the superior grade and is made permanent in that appointment, he comes under the control of the Secretary of State ?—(Sir *Malcolm Hailey*.) He comes permanently under the control of the Secretary of State if he is permanently admitted to a listed post.

11,245. Even although he comes from the Provincial Service ?—He is only appointed to a listed post with the sanction of the Secretary of State.

Sir *John Wardlaw-Milne*.

11,246. Is not that paragraph 188 optional and not obligatory ?—Optional.

(Sir *John Wardlaw-Milne*.) It is not necessary that he should come under that clause. It is an option.

(Marquess of *Salisbury*.) May I just refer to a note in the White Paper, on paragraph 183, at the bottom of page 82—I do not quite understand it. Up to now, as I understand it—

(Marquess of *Reading*.) Will you tell us which of the notes you are referring to ?

Marquess of *Salisbury*.

11,247. It is the lower note, beginning : "Under existing conditions the personnel required for External Affairs and for conducting relations with the States belong to a common department—the Indian Foreign and Political Department." That is to be changed, as I understand by that note and after the commencement of the Constitution Act, the latter, that is the Political Department belonging to the States, will be under the Viceroy. On the other hand, the personnel of the Department of External Affairs, that is, Foreign Affairs, will be under the Governor-General, who will himself direct and control that Department. Now I do not quite understand why foreign affairs and personnel are under the Governor-General, and State affairs and personnel are under the Viceroy. Of course, they are the same person, but it has a different result ?—(Sir *Samuel Hoare*.) The reason, Lord *Salisbury*, is that political affairs, namely, the relations with the States, are outside the Federation altogether.

11,248. They belong to paramountcy ?—They belong to paramountcy.

11,249. But external affairs are reserved ?—They are reserved. I think Lord *Salisbury* will see that this is a Constitutional difference rather than a difference of substance. External affairs are a Federal subject that is reserved, whereas political affairs are not a Federal subject at all.

11,250. I imagine it is only a question of drafting really, but that the Secretary of State will realise that as the words are drafted now, the Governor-

General would have to act in these respects by the advice of his Ministers ?—No ; because it is a reserved subject.

11,251. As long as that is quite clear, it is merely the difference of the dual personality of the Governor-General ?—And a difference of constitutional drafting. It is nothing more than that. In both cases the Governor-General or the Viceroy will be acting at his discretion.

11,252. Now, I have only one other paragraph to call attention to on this part, and that is paragraph 186. The Secretary of State has, of course, noticed that there has been some discussion as to the ultimate security for the pension rights of the Civil Service ?—Yes.

11,253. I think perhaps it would be an advantage if he would clear that up here in the Committee. The Pension Fund of the Services is at present a matter absolutely secured by the Secretary of State himself, and by the full credit of the British Government ?—No ; it is secured upon the revenues of India.

11,254. But it is in point of fact secured at present by British guarantee ?—No ; there is no British guarantee.

11,255. At any rate, as a matter of practice, as things stand at present it is not suggested that there ever could be any failure to meet the claims upon the Fund, short of the bankruptcy of the British Treasury ?—There is no Fund. It is a part of the general revenues of India. I quite agree with Lord Salisbury in no contingency that one could contemplate would there be a repudiation of that obligation, but the obligation is secured solely and only upon the revenues of India.

*Lord Hardinge of Penshurst.*

11,256. When you say repudiation do you mean repudiation by the Government of India or by the Government at home ?—I mean by anyone.

11,257. That is very important. Supposing there was a deficit in India and that they could not pay the pensions from the revenues, who would pay them then ?—We have never contemplated the possibility of a contingency of that kind, but there is no guarantee of the British Treasury ; there never has been.

*Lord Hardinge of Penshurst.*] It might arise.

*Marquess of Salisbury.*

11,258. The Secretary of State will see the distinction. At present, certain sums of money are paid by the Civil Servants every year into the Pension Fund. There may be no actual Fund but there is what is absolutely equivalent to a Fund, the complete credit of the British Government behind it, because it is unthinkable that the money should be paid in and the British Government should say, "We have nothing whatever to do with it. That all depends upon the revenues of India" ?—That is exactly the position the British Government has always maintained.

11,259. Is that the Secretary of State's considered answer, that there is no greater security in the present system than what is involved in the revenues of India ?—Technically, that is so.

*Lord Rankeillour.*

11,260. But the fact that the expenditure of India can be controlled from home does afford an indirect security, does it not ?—And we have always stated—indeed, my predecessor stated in the House of Commons two or three years ago—that His Majesty's Government will not allow a situation to arise in which India could repudiate.

*Marquess of Salisbury.*

11,261. Two or three years ago he said that ?—Yes ; I have repeated it.

11,262. Would you repeat it after the White Paper passed into law ?—Yes ; certainly.

11,263. Of course, I think if that was the absolutely settled commitment of the British Government it would make a great deal of difference ?—We have made the statement time after time ; I have myself repeated it comparatively recently in the House of Commons and I re-stated it in answers to correspondence. There is no secrecy or hesitation about it.

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11,264. May I ask is the Secretary of State referring to Lord Peel's Despatch of April, 1923 ?—No ; I am referring specifically to Mr. Benn's answer to a question in the House of Commons so far as I remember during the discussions

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of the First Round Table Conference, or about that time, and since accepted and repeated by me on behalf of the present Government.

*Marquess of Reading.*

11,265. May I ask a question? Does it not really amount to this, that from the answers which have been given and the general discussion some very indefinite moral obligation is said to rest upon the British Government? The British Government has made the statements through you and I think your predecessor, but there has never yet been any definite obligation of guarantee undertaken by the British Government. It has never become a charge upon British Finances, contingent or otherwise, up to the present. That is the position, is it not?—That is so.

11,266. Although it is expected that if the circumstances ever did arise and without binding the Government, it would be necessary for the British Government to intervene. I think that is the position, is it not?—I would prefer to restrict myself specifically to the statement that I made upon the subject and which I can circulate to the Members of the Committee.

*Marquess of Salisbury.*

11,267. The Secretary of State does not think that in face of the Constitutional change it would be necessary to supplement the former guarantees by something specific in the Act?—No, I think definitely that it is not necessary. The whole of the White Paper Scheme is founded upon the conception that these obligations will be met, and supposing we had governments in India who were not willing to meet obligations of this kind, we think we have taken powers in the White Paper to ensure that these obligations will still be met. Further than that, I would point out, Lord Salisbury, that it is impossible, so it seems to me, to draw a distinction between one kind of obligation and another kind of obligation. We believe that these obligations are going to be met. In actual practice the obligation for the payment of the Services is a comparatively small obligation when you compare it with the much greater obligations of the service of the debt, and the expense for defence.

11,268. May I interrupt the Secretary of State to ask what he means by "small"—does he mean small in amount?—Small in amount.

11,269. It does not mean small in obligation?—No; not a bit; I am much obliged to Lord Salisbury for making that intervention. I regard all these obligations as equally sacred. When it comes to questions of amount—and after all one has to take into account the question of amount—when one considers the likelihood of the obligations being met or repudiated, the obligation for the pensions is a comparatively small one. The much bigger obligations are the obligations for Defence and the service of the debt. We feel that we have made proposals under the White Paper that will ensure all those obligations being met, both the greater obligations for the service of the debt and for Defence, and still more the obligations for the service of the pensions.

*Sir Austen Chamberlain.*

11,270. Secretary of State, may we for a moment exclude Defence and confine ourselves to these pensions and the debt, which seem to me more analogous to one another than is the Defence service. The position in regard to the debt and to the pensions at present, I understand, is that they are a charge upon Indian revenues?—Yes.

11,271. And they have no guarantee by the British Government except the statement of British Ministers of what is an obvious truth, that the British Government would not allow the Indian Government to default on those obligations?—Yes

11,272. After the Reforms, these will still remain in the same position?—Yes.

11,273. A charge upon Indian revenues?—Yes.

11,274. But, as I understand, from your earlier answer, your predecessor and yourself have stated that it would still be impossible for the British Government to allow a default on either?—Yes.

11,275. I am right, am I not?—Yes.

11,276. And you say that within the White Paper you have taken powers sufficient to enable you to prevent such a



default if the emergency should arise ?  
—Yes.

11,277. Can you give me a reference to the particular powers ?—Yes. First of all, short of a breakdown of the Constitution, the fact that those charges are a first charge upon the revenue and they are not votable.

*Marquess of Salisbury.*

11,278. Are they a first charge before the service of the loans ?—No. I am not distinguishing between one of these obligations and another. The Funds for the Reserved Services are not votable and they are a charge that has got to be met from the revenues. If Sir Austen wants special reference to those powers he will find it in paragraph 18 (b).

*Sir Austen Chamberlain.*

11,279. That is what I understood the Secretary of State to refer to but I wanted to get the matter perfectly clear ?—Yes. Supposing, I hope, the very unlikely and indeed impossible contingency, of an Indian Government refusing to work the scheme at all, then the breakdown clause comes into operation, and the Governor-General and the Governor have complete powers to deal with the situation.

*Mr. Zafrulla Khan.*

11,280. May I suggest that paragraph 49 also deals specifically with all these charges and makes them non-votable ?—Yes ; that is the clause giving the powers to make those charges non-votable.

*Sir John Wardlaw-Milne.*

11,281. May I ask, on clause 49, do the Pension charges come under the second head of Expenditure under the Constitution Act ?—It comes under subsection (vi).

*Lord Eustace Percy.*

11,282. May I just clear that up ?—Is it quite true that under the White Paper these Pensions would be a charge upon the whole revenues of India ?—Has it not been contemplated that future pensions would be primarily a liability upon Provincial revenues according to the place of service of the officer ?—Yes. If

Lord Eustace will look at paragraph 186, the second part, he will find that they remain a charge upon the Federal revenue.

*Mr. M. R. Jayaker.*

11,283. Secretary of State, there is also additional power under paragraph 92, is there not, that the Governor-General can levy taxation by asking the Legislature to pass a Finance Bill in order to safeguard his special responsibilities ?—Yes ; that is so.

*Marquess of Salisbury.*

11,284. At any rate, the Secretary of State does not think that the susceptibilities of the expectant pensioners ought to be considered in this matter. They are evidently under an apprehension that the change will damage their security. He does not think that some step ought to be taken to make it abundantly clear to them that they are in as absolutely a strong position as they were before the passing of this Act, if it becomes an Act ?—I am quite aware that many of them are very anxious. I think, if I may say so in passing, they have been made more anxious by the very active propaganda that has been carried out to stir up their anxieties ; but, realising the depth of their anxiety, I still say that they are safe and we have taken effective steps for ensuring the security of their pensions and I do not think anything further is needed.

*Sir John Wardlaw-Milne.*

11,285. Might I just ask one other question of the Secretary of State : In Appendix VII, Part III, can you say whether the categories set out in that Appendix cover all those whose pensions are guaranteed at present by the Secretary of State's act ?—Would you repeat that question ? I did not quite follow.

11,286. All I want to know is whether these various categories set out in Appendix VII, Part III, page 122, cover all those whose pensions are at present guaranteed by the Secretary of State ?—Yes ; it is a continuance of the existing obligation.

*Lord Hardinge of Penshurst.*

11,287. I presume that the military officers and the officers in the British

Indian Army would be in the same position as the Civil Servants, as regards their pensions ?—Yes.

Earl of *Derby*.

11,288. It is not specified though, is it ?  
—No ; I do not think it is specified, but it certainly is the intention of the Government to bring them under the same conditions.

11,289. You would be ready to bring that particular class in under the non-votable salaries on page 122 ?—Yes.

Marquess of *Reading*.

11,290. Does that not come in under the service for the Army ?—Yes. I am informed that they are already included in these paragraphs, but we propose to make it more specific.

*Chairman.*] Lord Salisbury, I understand that you have some questions on paragraphs 109 and 121, but you will reserve those ?

Marquess of *Salisbury*.] Yes. I understand the Secretary of State would rather keep them separate.

*Chairman.*] That, I think, would be as well

Mr *Morgan Jones*.

11,291. I understand the Secretary of State to propose that he would circulate his announcements on the points raised by Lord Salisbury. Will he also include in that circulated statement the statement of Mr. Wedgwood Benn ?—Yes, certainly.

Archbishop of *Canterbury*.

11,292. I only want at present, Secretary of State, to ask one question on one point ; no doubt it has been much discussed in the course of the evidence, but the evidence leaves me a little vague. It is in paragraph 184. What we are to consider as existing rights ? I understand that is to include what are called accruing rights, and very strong pressure was brought to bear upon us by evidence that legitimate rights should include these accruing rights, but there seems to me to be a great difference of opinion between the services and Lord Peel's statement of 1923 on the advice of the Law Officers of the Crown as to what

expectations for accruing rights should really include. It was represented to us that from the point of view of some of the services accruing rights should include rights if a post to which any Member of the service has legitimate expectations of obtaining were abolished, they should obtain either a similar post or the salary of that particular post. I wanted to know what in the mind of the Secretary of State are the accruing rights which have to be specially protected ?—His Grace has raised a very complicated and controversial issue, namely, as to what really is meant by an accruing right.

11,293. Yes ?—We were anxious, if we could, to get away from an expression that has occasioned a good deal of doubt and a good deal of dispute in recent years. At present there are two kinds of rights ; existing rights, namely, the rights to which an official is entitled when he enters the Service and accruing rights—rights to which it may be considered that he is entitled when he leaves the Service, or before he leaves the Service. I think it is clear that both those rights have got to be taken into account. Our view is that in the case of existing rights it is comparatively easy to define them, and we do set them out in the Appendix VII. As to accruing rights, two views have been taken, each of a rather extreme character : (1) That they are so vague that you cannot define them at all ; (2) that they are so definite that any change in the conditions of Service in India really amounts to a repudiation of some right to which the official is entitled. We have come to the view that the wise course is to set out the existing rights, but not to attempt to define the accruing rights. We have found the more we have gone into the question the more difficult it is to define an accruing right, and it is essentially a question upon which a measure of discretion must be left to somebody. Let me give His Grace an example. Supposing a particular post—one of very many—was abolished in the administration of India for this reason or another : the effect that the abolition of one post might have upon the great body of Indian civilians would be so insignificant as to be almost indefinable. If, however, a whole class of posts were abolished, to

which in the ordinary course a civilian might look forward for promotion, then I think it might be argued that the careers of certain officials have definitely been injured. Holding that view, we propose that a discretion should be left for the compensation of accruing rights and that that discretion should be left to the Secretary of State.

11,294. I am obliged to the Secretary of State for his full and clear statement. I understand, in view of that, so far as we are concerned, "accruing rights" would really mean a reasonable expectation of special compensation?—Yes.

11,295. And the discretion as to the claim or amount of compensation would be entirely in the hands of the Secretary of State?—Yes.

*Lord Snell.*

11,296. My Lord Chairman, did Sir Samuel Hoare mean that? If a case arose at any particular time the Secretary of State would judge it at that time on its merits?—Yes.

*Dr. B. R. Ambedkar.*

11,297. My Lord Chairman. I would like to point out to the Secretary of State that the expression which we find in the Government of India Act—"existing and accruing rights"—is an expression which is also found in the South African Constitution Act. I was wondering whether it would not be possible for us to get a statement from the Dominion Office to find out exactly how that expression has been acted upon in South Africa?—We made an inquiry upon this very point Dr. Ambedkar I think did allude to it during the summer and I have asked the Dominion Office for the information. I have not yet got it, but I am told that the cases are separate and distinct. In the case of South Africa there is no promise of compensation at all.

Sir *Manubhai N. Mehta.*] I think they have it in Australia as well.

*Dr. B. R. Ambedkar.*

11,298. I simply wanted to know how the expression, "accruing rights," had been interpreted in South Africa by the South African Government. The expression is exactly the same?—I will see

if I can get it. I asked about South Africa and Australia as well.

*Mr. M. R. Jayaker.*

11,299. If there is no compensation in South Africa the question will not arise in that way, will it?—That is our view.

*Sir Austen Chamberlain.*

11,300. In reference to the answer which you gave to the Archbishop a moment ago, may I see whether I rightly understand its effect? I think the accruing rights were illustrated in a claim put before us by witnesses by the case of Commissioners. Do I understand, broadly, from your answer that if in a Province a single Commissioner were abolished you would consider that that gave rise to no claim for compensation, but if at the other extreme all Commissioners were abolished, you would interpret that as affecting the accruing rights and entitling the people to compensation?—It is difficult to give a categorical answer Yes or No to a question of that kind. For instance, the number of Commissioners varies from Province to Province, and the abolition of one commissionership in a Province where there were only two or three would, it seems to me, be very different from a case where it might be the abolition of one commissionership in a Province where there were several of them. I think that case seems to show the necessity of maintaining discretion somewhere and of dealing with cases upon their merits. Speaking generally, however, I would agree with the suggestion that seemed to underlie Sir Austen's question, namely, that the numbers would make a considerable difference and obviously there would be a considerable difference so far as an official was concerned in his hopes for promotion, if the whole of this class of posts were abolished, as compared with the abolition of, say, one post out of ten.

*Archbishop of Canterbury.*

11,301. Mr. Secretary of State, I have before me what I think Sir John Kerr said on this matter: "Supposing commissionerships were abolished, our suggestion is that members of the Services should receive the pay which the Commissioner would have received if the commissionership had not been abolish-

ed." You would agree that is putting a rather strong claim, and I gather from you that much would depend upon whether it was a single commissionership which was abolished or whether it was a whole class, so to say, of that office which was abolished?—Yes.

11,302. You would not recognise that in a Province where a commissionership, for reasons of economy or administration, was abolished, some member of the Service there (perhaps the most senior) who might have expected that commissionership, would be entitled to the full pay which he would have received had he got it?—I would fall back upon the answer I just gave to Sir Austen Chamberlain, namely, that cases of that kind must really be taken individually upon their merits.

Archbishop of *Canterbury*.] Thank you. That is all I wanted to ask just now.

Marquess of *Reading*.

11,303. Only one point, Sir Samuel; that is, with reference to your observations on Section 21 of the Government of India Act. You remember it arose this morning?—Yes.

11,304. And questions were put to you to elucidate the position. I just want to get one point clear from you. As I understand it, you have told us that this Section 21, which puts the obligation on the Secretary of State's Council to control the expenditure of revenues, that is, to the extent that no grant or appropriation of those revenues can be made without the assent of the Secretary of State's Council. I am referring to the Section?—Yes.

11,305. I am not paraphrasing the language. I am not being too precise about it, but I mean altogether Section 21 to which you refer?—Yes.

11,306. You said just now, as I understood and agreed, that that is a provision to protect India?—Yes.

11,307. The effect of it, as I understand it, is that, assuming that the Government here wish to appropriate part of the revenues of India to a particular purpose that could not be done unless the Secretary of State's Council agreed to its being done?—Yes.

11,308. And notwithstanding a decision of the Cabinet, the Secretary of State's Council as it at present stands, and in relation to these matters, is supreme?—Yes.

11,309. You could never alter it unless you altered the Act of Parliament?—That is so.

Marquess of *Salisbury*.

11,310. But it is not limited to cases where the British Government is intent on getting money unjustly from the Indian Government. All expenditure is under the control of the Secretary of State's Council?—Yes. In actual practice in recent times it has tended more and more to be restricted to those cases.

11,311. In practice, you mean?—Yes.

11,312. But not in law?—Not in law.

Marquess of *Reading*.

11,313. The language is very wide, as Lord Salisbury appreciates. It says: "No grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India." It is not limited in any way. I was simply dealing with what the Secretary of State had said relating to the practice. I only wanted to put one question with regard to it, Secretary of State. If the Council of India as now constituted disappears and the advisory body is substituted as proposed in the White Paper, Section 21 would cease to have operation, would it not?—Yes.

11,314. Because, of course, the authority (the Council of India) will have disappeared in that relation?—The Council of India will have disappeared, and the safeguards in future are a different kind of safeguard.

11,315. Yes?—Namely, the safeguards set out in the White Paper as contrasted with the safeguards now possessed by the Council of India.

11,316. I am not raising objection to it?—No.

11,317. I only wanted to make quite clear what the position is so that there

might be no doubt about it afterwards, but the effect is that that particular provision will cease to operate, and there will be substituted for it, that is to say, for the protection of Indian and British interests such safeguards as there are in the White Paper?—Yes.

Marquess of *Reading*.] That is all I wanted to ask.

Lord *Rankeillour*.

11,318. May I just ask a question or two on the point which was last raised. As I understand at present there is a moral but no legal guarantee of the interest on any Indian loan by the Home Government?—There is the guarantee that has been defined several times in recent years by succeeding Governments.

11,319. Yes, but there is no legal guarantee. You could not put on a prospectus for an Indian loan that it was guaranteed by the Home Government?—No.

11,320. But, at the same time, the Indian Council here in Westminster has had the power of checking Indian expenditure?—Yes.

11,321. And the fact that that power exists must have had a good effect on the security of Indian interest and the prices of India stock?—It is very difficult to say Yes or No to a question of that kind. For instance, this spring, in the middle of the controversy over the White Paper, when every kind of attack was being made upon certain of its financial proposals, upon the ground that there would be no security in the future for the investor, and so on, we issued the most successful loan in London that has ever been issued.

11,322. But gilt edged was rising all the time all round?—Even so that did not explain altogether the success of the loan.

11,323. But, surely, the fact that the Home Government could have a check on the expenditure of the Indian Government, other things being equal, must have a beneficial effect?—Other things being equal, but other things are not equal, for this reason that, under the White Paper, we make other proposals and other kinds of safeguards.

11324. Exactly, and therefore it must be the business of this Committee to see that those other safeguards are equivalent to the former?—Certainly to see that the safeguards are effective for the purpose.

11,325. I think in one of the declarations of the Prime Minister which has been alluded to, he practically intimates that it is our duty to see that they are, does he not?—I do not think there is any doubt about it. We have always said these obligations have got to be met.

11,326. Obviously, but as Lord Reading has just pointed out, one existing safeguard is being withdrawn, and therefore it makes it the more necessary that we should be quite sure that the substitution is adequate?—Yes, certainly.

11,327. It is really bearing upon this same matter: It has been suggested in Memoranda from Civil Servants, and so on, that a situation might arise perhaps automatically, without any evil intention, where there actually was not money enough in the Exchequer to pay, say, the pensions. In that case (I think I asked, if I remember rightly at one of the last sittings) I asked Sir Malcolm Hailey, whether the Governor, either the Provincial Governor, or the Governor-General, could supply the funds by Treasury Bills, or otherwise, and the answer was that he would have to assume the functions of Government; that is to say, go outside the ordinary Constitution before he was able to do so?—(Sir *Malcolm Hailey*.) Yes. As Governor-General he might use his special legislative powers.

11,328. Yes.—The Governor probably would have to announce a breakdown of the Constitution and take over the whole of the financial arrangements.

11,329. And that would involve considerable trouble and delay in payments?—Not necessarily; because if he took over all the powers of the Local Government, he could suspend payments on all other sources of expenditure except the pay of the servants of the Crown, and their pensions.

11,330. Would it not be possible to devise some plan whereby these, what I may call covenanted charges, should be paid automatically perhaps by an assignment or separation of certain revenues.

I only throw it out. I do not want an answer for the moment.—(Sir *Samuel Hoare*.) It is a suggestion that we have considered. In actual practice it is not easy to carry out, but I think it is a suggestion which the Committee must consider. We will look into it again.

11,331. Thank you. Then I have only one or two other smaller matters about which I want to ask. The Police Association in their Report, I daresay you remember, draw special attention to a fear that they have lest the Public Service Commission may interfere in police discipline. I suppose you have that possibility before your mind?—Yes, and we have no intention of powers of that kind being given to the Public Service Commissions. I think it would be a great mistake from the point of view of the Public Service Commissions themselves.

11,332. They also suggest in paragraph 29 of their submissions that the Public Service Commission on the other hand should be appointed in some way to protect the rights: Have a Standing Commission to protect the rights of the Services. Have you considered that?—Yes. Speaking generally, the proposals about the Public Service Commission are based upon the existing Public Service Commission at the centre. We think it is possible that there may be some differences between one province and another, but upon the whole we have based our proposals upon existing experience that has worked not unsatisfactorily.

11,333. You do not think it necessary to be more specific as to the powers of this Commission as the Police Memorandum suggests. I only throw it out as a suggestion?—(Sir *Malcolm Hailey*.) Our general view has been that the Public Service Commission should have only an advisory function. Proposals have been made, particularly from one local Government, that it shall have certain executive powers as well. I think other local Governments and the Government of India have been opposed to that and the White Paper does not take that line. The White Paper proposes to give them an advisory position only. The fear of the Police Association was that we should take away from the Inspector-General of Police the disciplinary powers that he

now has of dealing with certain classes, such as Sub-Inspectors of Police, and refer those to the Public Service Commission. It does not necessarily flow from the proposals in the White Paper that the Public Service Commission in the Province would be consulted regarding appeals on disciplinary matters from that particular class of servant. It would be necessary to place in the hands of the Governor or some other Authority power to define the class of appeals upon which the Public Service Commission should be consulted, and if that were done I think the point made by the Police Association would be met.

Archbishop of *Canterbury*.] May I just ask this question arising upon that, Sir *Malcolm*? In paragraph 199, the phrase "The Governments will be required to consult" these Service Commissions "on all matters relating," etc., would include not only what is specified there but questions of appeal arising from any sense of grievance.

Marquess of *Salisbury*.] An absolute right.

Earl of *Derby*.

11,334. There is no right in paragraph 199?—Paragraph 199, if I may point out to you, only refers to methods of recruitment, appointments, promotions and transfers.

Archbishop of *Canterbury*.

11,335. Where is there anything about appeals?—If you would refer to paragraph 200, you would see that provision is made for the Federal and Provincial Governments being required to consult the Public Service Commissions, subject to such exceptions as may be "specified by regulations made from time to time by the Secretary of State or a Governor, as the case may be".

Marquess of *Reading*.

11,336. And also the White Paper, in the last sentence of Article 201?—Yes. There does remain power under the White Paper proposals to meet the exact point that was made by the Police Association.

Sir *Hubert Carr*.

11,337. Does paragraph 199 allow you to exclude appointments of the subordi-

nate services of the Police from reference to the Public Service Commission, because that is where I understood the police officials laid such stress? There is recruitment from subordinate to the provincial service as well as the appointment to the subordinate service, and they wish those, I understand, very distinctly in their own hands?—I think that there is full power to keep those away from the Public Service Commission, which would not necessarily deal with subordinate services, but only with provincial services.

11,338. I think it is in paragraph 70 of the Introduction. It rather indicated to me that the Federal and Provincial Public Services there would cover all those Services, including the subordinate Services—that the whole field was covered. At the top of page 35, the Second Paragraph: “The Provincial Services cover the whole field of Civil Administration of the Provinces in the middle and lower grades.” I was wondering whether paragraph 199, unless some proviso was put in, would not require the Governments to consult the Public Service Commission about appointments to lower grades of the Police and also promotions?—I think one might answer definitely that paragraph 199 as drafted does not compel them to consult the Public Service Commission regarding subordinate services, but if there is any doubt on that point, I may certainly say it was the intention that the Public Service Commission should not be consulted about the subordinate services.

11,339. That is recruitment from the Provincial to the subordinate. That again the Police laid great stress upon—not only recruitment from outside. I think they said they did not object to that coming under the purview of the Public Service Commission, but they did object to recruitment from the subordinate services to the Provincial Services?—Under the terms of the White Paper the Public Service Commission would be consulted about recruitment to the Provincial Service from the Subordinate Service or outside.

11,340. I think that was one of the things the Police wished to be left very much in their own hands as a matter of discipline?—The Governor would, I think, be able to make that exception

under paragraph 200. I think, if I might say so, that is a point for consideration by the Select Committee itself in making recommendations about the Public Service Commission; it is one of the points they would have to consider.

Sir *Abdur Rahim*.

11,341. Does it follow that all matters of promotion from the Subordinate Service to the Provincial Service or from the Provincial Service to the Imperial Service will be taken out of the hands of the responsible Government?—No, not if the Public Service Commission is given an advisory capacity only. Those appointments or promotions would be made after consulting the Public Service Commission.

11,342. What I mean is as regards the Subordinate Services and promotion, the Police evidence is that that ought to be left in their own hands; that is, the Superintendent of Police, for instance, or the Inspector-General of Police. Then, the responsible Government will have no say in the matter—is that it?—Under the Police Act all appointments, disciplinary acts and the like of the Inspector-General of Police are under the general control of the local Government.

11,343. Is the question of promotion also a disciplinary matter?—Yes; it falls within the terms of the Act; the questions of promotion are under the control of the local Government.

Lieut.-Colonel Sir *H. Gidney*.

11,344. Is it not the practice to-day that the Public Service Commission only advises the promotion—they do not appoint?—That is the practice to-day and it is proposed in the future that it should be the practice. It is only advisory.

11,345. They do not appoint?—No.

Archbishop of *Canterbury*.

11,346. Would you forgive my ignorance and tell me where exactly the Subordinate Services end and the Provincial Services begin—what grades?—In the Police the All-India Service comprises the posts of Superintendent and Assistant-Superintendent and anything above that. The Deputy Superintendent and in some Provinces the Inspectors

are Provincial Service Officers ; the Sub-Inspector and anything falling below that, such as the Sergeant or the Constable, belong to the Subordinate Police Service.

Sir *Hubert Carr.*] May I point out that the whole of that is set forth very clearly on page 144 of the evidence, in paragraph 14 of the Public Service Commission ; that defines the different grades of police and the importance of keeping promotion between the two grades away from any political interference.

*Sir Austen Chamberlain.*

11,347. Is it the intention that the appointment of a Constable to be a Sergeant should be a matter for consultation with the Public Service Commission ?—No ; that is why I pointed out that paragraph 199 stops at Provincial Services and does not contemplate Subordinate Services.

*Lord Rankeillour.*

11,348. One more matter (it may have been explained before) rather on the same lines : Paragraph 183 says that "The Secretary of State will after the commencement of the Act make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department." Paragraph 185 says, "The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown" by himself and so on. That seems to imply that he will have an absolute discretion as to how far he will exercise his powers under paragraph 183. It does not seem quite clear. The intention as regards the police has been explained, but it does not seem quite clear what actual appointments he will make in the Indian Service, in reading paragraph 183 with 185 ?—(Sir *Samuel Hoare.*) It is really continuing the practice that was started under the 1919 Act, namely, that some posts are scheduled. There will have to be an up-to-date schedule of those posts.

11,349. And he can alter those now, can he ?—He can now.

11,350. And it is merely a continuation of the existing practice ?—It is a continuation of the existing procedure.

*Marquess of Salisbury.*

11,351. So that a district Magistrate might in the discretion of the Secretary of State be removed from the Schedule, and made subject entirely to the responsible Minister ?—It depends entirely as to the procedure that is adopted. If the Schedule is in the Act, then only an Act of Parliament can alter it, unless powers are given to the Secretary of State under the Act.

11,352. Will the Schedule be in the Act ?—Yes ; we propose to put it in the Act.

*Marquess of Reading.*

11,353. If he is a member of the Indian Civil Service, that remains perfectly clear, that he is subject to the Secretary of State and only to the Secretary of State in respect of all the rights which have been discussed. That is quite clear, is it not ?—Yes.

*Marquess of Salisbury.*

11,354. Only to be quite certain, in the answer which Sir Malcolm was kind enough to give me just now, he said that the security which we are seeking for the District Magistrates depended upon the Schedule ?—(Sir *Malcolm Hailey.*) Yes. Might I explain that position ?—If you will glance at the end of the Government of India Act, in the third Schedule, pages 151 and 152, you will see that the Act prescribes there that the following offices, namely, No. 10, District Magistrate, shall be filled by a member of the Indian Civil Service ; there are a number of other posts of the same description, such as Secretary in the Government. I think I am right in saying that it is the intention that that Schedule should, if necessary, in a corrected form, be continued as part of the New Constitution Act. The power of the Secretary of State under paragraph 183, therefore, will only be to regulate the strength of cadre, and the conditions of service and to make appointments. He would not, so long as that Schedule remained part of the Act, be able to declare that all District Magistrates should be taken from any other Service than the Indian Civil Service.



*Sir Austen Chamberlain.*

11,355. What is the effect of paragraph 185?—(Sir *Samuel Hoare*.) I think the Committee ought to consider this question both from the point of view of safeguarding these posts and also from the point of view of not tying up details so rigidly as to make the working of the Constitution Act difficult. If they will look at paragraph 189, they will see there that upon the whole we think it might be better to adopt the procedure of laying a list of these posts upon the Table of both Houses, year by year, rather than setting them out in detail in a Clause or a Schedule of an Act of Parliament. In making that proposal we have not any ulterior motive in our minds of removing the safeguards, but we do think it worth the while of the Committee to consider whether that is probably the better procedure.

11,356. But the Secretary of State will forgive me—this is very difficult to understand for an ignorant person like myself, but I still do not understand what is the purpose of paragraph 185. Sir Malcolm Hailey has just given us an account of what will happen under paragraph 183, which seems to me to leave no place for paragraph 185. I have no doubt that is due to my ignorance?—(Sir *Malcolm Hailey*.) Paragraph 185 refers to those posts which are not scheduled in the Act as reserved to particular Services.

*Lord Rankeillour.*

11,357. Might I ask, under paragraph 185, will it or will it not be possible for the Secretary of State, whatever the rights of an individual may be, to take a certain class of posts out of the Indian Civil Service and hand them over to the Provincial Governments and reduce their status?—No; not if they are scheduled as before in the Government of India Act.

11,358. Is it the definite intention of the Government to continue the Schedules as now found in the Government of India Act—to re-enact them?—(Sir *Samuel Hoare*.) Yes, it has been the intention to continue the Schedule. The question about which I am in doubt is whether it is wiser to put a Schedule of that kind into the Act, or whether it is not better to adopt a procedure, as I

say, of laying a list year by year upon the Table of each House.

11,359. With power to the House to object within so many days?—Yes.

*Sir Austen Chamberlain.*

11,360. I understand that paragraph 183 contemplates that you will have a list of posts scheduled in the Act?—Scheduled in some way, yes.

*Marquess of Salisbury.*

11,361. Not necessarily in the Act?—Actually in the White Paper scheduled in lists to be laid before Parliament.

*Archbishop of Canterbury.*

11,362. But surely, Secretary of State, paragraph 189 only gives a statement of the vacancies and the recruitments made—not as to particular classes of officers?—Yes. It is none the less a question, which is the better procedure with a list of that kind, whether to put it in detail in the Act, or whether to deal with it under the procedure suggested in paragraph 189.

11,363. If paragraph 189 is to bear the construction that you wish to put upon it, its drafting will have to be very much changed?—Yes; certainly.

*Sir Austen Chamberlain.*

11,364. I cannot get clear the relation between paragraphs 183, 185 and, now, 189. Are they three alternative cases or are they all parts of one machine? Shall I try to make my meaning clear? I understood Sir Malcolm Hailey to say a few moments ago that under paragraph 183 there would be a Schedule?—Yes.

11,365. I thought that he indicated that the Schedule would be in the Act?—Yes; he did.

11,366. That, therefore, cannot be altered under paragraph 185?—I made the caveat that that is a question the Committee must consider, whether it is better to put the Schedule into the Act or whether it is better to adopt the other procedure. It is not a question of principle at all; it is a question of procedure, it seems to me.

11,367. Assuming that the schedule goes into the Act, then Proposal 185 would deal only with appointments

coming under it but not included in the schedule foreseen by Proposal 183 ?— (Sir *Malcolm Hailey*.) Yes. (Sir *Samuel Hoare*.) Yes.

*Archbishop of Canterbury.*

11,368. I do not want to make difficulties, Mr. Secretary, but to remove them. Proposal 185 deals specifically with persons appointed by the Secretary of State ; that would include members of the Civil Service, and seems to give to the Secretary of State power to alter the number and also the character of posts held by these persons. It is a very wide power ?—Could Sir Malcolm just deal with that question ?

*Marquess of Reading.*

11,369. I was going to make one suggestion with regard to it—I do not know whether it is right or wrong. This is what occurred to me : You have the definite obligation in the one paragraph—No. 183—which says what has to be done. The Secretary of State's obligation is to make these appointments. Then there is a special provision in No. 185 which deals presumably with the number of posts and also with the making of rules regulating these posts and leaves it open to him, does it not, to give sanction if necessary, should a vacancy occur which does not require to be filled up. Is not that what happens ?—(Sir *Malcolm Hailey*.) I think Paragraph 183 refers to posts which we could describe as scheduled in one form or another. No. 185 is intended to refer to posts which do not fall within that schedule and to give certain powers to the Secretary of State to fill up such posts temporarily and also to lay down any rules regarding the filling up in any way of a post on the reserved list. Our present procedure, as Lord Reading knows, is of listed posts.

11,370. Or of keeping vacant a post which does not require filling up ?—Yes ; so that Paragraph 185 really refers mainly to posts not on the reserve or scheduled list and keeping open posts on the reserved or scheduled list.

*Archbishop of Canterbury.*

11,371. It is obvious, Sir Malcolm, that if your interpretation of 185 is

right the drafting of the first sentence of that proposal will have to be very much changed, because, as it stands, it gives very much wider powers ?—(Sir *Samuel Hoare*.) I should think it might perhaps be convenient, after this discussion, if I circulated a note showing how these three clauses interlock with each other.

*Sir Austen Chamberlain.*

11,372. That would be the best way ?—They really are complementary and I think I can make that clear in a note, but it is rather convenient with this variety of services and this variety of service conditions.

*Mr. M. R. Jayaker.*

11,373. May I suggest that the Secretary of State should consider carefully whether he agrees with Sir Malcolm's interpretation of No. 185 because Proposal 185 by the words used does apply to the reserved posts ?—I think there is something in what Mr. Jayaker has just said, and we will make a note for the guidance of the Committee.

*Mr. Zafrulla Khan.*] May I suggest for your consideration, as well, Secretary of State, when that note is being prepared, that 185 does contemplate something like this : The schedule says that District Magistrates shall be appointed from the Civil Service, but there is power to the Secretary of State to say that in such-and-such a Province there shall be 20 Indian Civil Service District Magistrates and that the number of Indian Civil Service District Magistrates shall not go below so many : that is to say, the number of each cadre to be in any post is specified by the Secretary of State. He has power to say that the Province shall employ so many Indian Civil Servants in their cadre, and so on, with regard to the other services. That is one way in which even the scheduled posts would come under the direction of the Secretary of State. There are several other aspects and I think Mr. Jayaker is right in suggesting that the proposal is intended to govern all posts in the scheduled list.

*Mr. M. R. Jayaker.*

11,374. May I ask your attention to Appendix VII on page 120, right No. 10.

I think proposal 185 refers to that right : "Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or local Government." I think Proposal 185 states more elaborately the right mentioned in that clause ?—That is so.

11,375. And it does apply to all scheduled posts on the interpretation I suggested and which Mr. Zafrulla Khan has just put before you ?—Yes.

Marquess of *Reading*.] May I suggest the matter should be left after the suggestion the Secretary of State has made ? If it is going to be considered and the Secretary of State is going to circulate a note to us, it can then be considered ; but it does not seem to me that we shall get very much farther by discussing it now.

Lord *Rankeillour*.

11,376. Will the Secretary of State set out in the statement what the posts are which are to be set out in the schedule, whatever the effect of the Schedule may be, and what are the posts he proposes to reserve some discretion about under Proposal 185, as far as can be done ?—I am not sure whether I should be in a position now to set out a list of these posts. I am in communication with the Government of India upon the subject. Some time or other I may do so. I do not think I can do so now. What I can do now is to circulate a note explaining the answers to the kind of points that have arisen on these three clauses.

Lord *Rankeillour*.] I will not press it further, as long as it is kept in mind.

Sir *Abdur Rahim*.

11,377. Will the Secretary of State make it quite clear whether under Clause 185 the Secretary of State will have the power to add to the number of certain posts ?—I will take that point into account in the note.

Sir *Abdur Rahim*.] Thank you.

Sir *Reginald Craddock*.

11,378. I am sorry to advert to pensions for a moment, but would the

L109RO

Secretary of State draw a distinction between pensions which are paid by the Government and family pensions funds which have been paid by the subscribers under a compulsory system of subscriptions ?—I have always thought that there is a difference between what is called the family fund and the other pensions funds. The family fund is, speaking generally, a fund exclusively of contributions made by the officials themselves. Moreover, in the nature of things, it is a fund, the obligations of which go over very many years. I had, for instance, brought to my notice a case that I think went over 90 years that was covered by family fund contributions, whereas in the case of the pensions the obligation is more easy to define and the obligation falls due at a date when it is much easier to define it. Keeping in mind those distinctions, I have always thought that there are strong arguments to be urged for funding the families fund. I have always understood that the contributors very much wish to see it funded.

11,379. Yes ; that is quite correct ?—And I have and so has the Government of India during recent months been circularizing all the contributors to the fund, and the answers that we have got all go to show that there is a general wish that this fund should be funded. I hope that we shall be able to carry into effect a scheme that over a period of years will fund it. It must take a number of years for the process to be carried out unless a very heavy obligation is to be put on Indian finances and I think also it will mean (and this fact we have pointed out to the subscribers) that a comparatively low rate of interest will be received on the fund and therefore the accumulations may be smaller in the future. The members of the fund, however, realize that inherent factor and, speaking generally, they want the fund funded and we are also ready to fund it if it can be done over a series of years and upon the kind of terms that we have put to the subscribers.

11,380. I was going to ask whether, although there is no question of the British Government at the present guaranteeing pensions, the British Government would guarantee those funds until such time as they have been funded. It takes a good many years ?—No. My

general answer would apply to that question just as it did to these other pensions. The British Government could not undertake a new obligation of that kind—an obligation which, in my view, would be unnecessary. There is not the least risk of these obligations not being met.

11,381. Would not the Secretary of State draw a distinction between repudiation, which there are full powers to prevent, and default owing to bad times, owing to failure of crops, or action taken by the local governments, say, to an absolute prohibition as regards liquor through which the resources of the Provinces and of the Federal Government itself might be at a very low ebb, in which case it would be almost impossible for it to meet the whole of these obligations. For example, supposing there was any default in the payment of the debt, that would create a great blow to credit, a much greater blow than if there was default in the matter of pensions. Does not the Secretary of State think there is a difference between those two risks?—No, I do not think I do. After all, these obligations, I suppose at the most, amount to four millions a year, Civil and Military; and I cannot conceive a state of affairs arising in which with the revenues of India there would not be this four million to meet this charge. It is a very small percentage of the revenues of India.

11,382. There is another question—I again apologise for referring to it, but I would like it to be made clear. Is it now proposed that the very term “accruing rights” should disappear from any Constitution Act?—There again upon a point like that I should like the advice of the Committee. The arguments against it appearing are that it is a phrase that has created a good deal of controversy and it is a phrase also upon which the Law Officers of the Crown have given a very definite interpretation. That, in the main, is the argument against it appearing in the Constitution. The arguments in favour of it appearing in the Constitution is that undoubtedly members of the Services attach considerable importance to it, and that it is certainly the intention of the Government to admit the claim to rights of this kind

within the general definition that I have given earlier this morning.

11,383. They would be left at present to the last sentence of the first paragraph of No. 182, would they not: “The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded”?—Yes.

11,384. Does that contemplate the possibility of the abolition of say a class?—Yes.

11,385. Such a class, for example, as superintending engineers?—Yes, that is so.

11,386. Could not the Secretary of State, if the word “accruing” is so very difficult, think out, with his legal advisers, some form of words which would give statutory effect to these particular cases—an alternative form of words which would define to some extent the distinction between a casual single appointment abolished and the disappearance of a whole class?—We will think again as to whether the phrase “accruing rights” had better come into the Act in any way, but I think anything in the nature of a precise definition would be quite impossible in view of what I have said in answer to other questions earlier this morning.

11,387. Yes; but would not it be possible to define it in some way dividing the two cases which you have distinguished into classes?—I do not think you can. If Sir Reginald would refer to the kind of answers that I gave to Sir Austen Chamberlain as to the case that he mentioned, the case of commissionerships, it is very difficult to make a precise definition and it really comes back to this, that somebody or other has got to have discretion for dealing with cases upon their merits.

11,388. Can Sir Samuel Hoare tell me whether, as a matter of fact, under the existing Government of India Act, and in consequence of the abolition of any posts of commissioners or superintending engineers, or conservators of forests, any such compensation has hitherto been given?—I do not think any case has arisen. There has been no general abolition of any type of post as far as I can remember.

11,389. I think there has been a rather large reduction in such posts as superintending engineers, for example ; that is to say, that perhaps three or four have been reduced to two. I believe there have been instances of that kind ?—Perhaps Sir Malcolm Hailey would say a word about that. (Sir *Malcolm Hailey*.) In two of the Provinces at least, such posts of superintending engineer have been reduced, and I believe that it is still under discussion between the Government of India and the Secretary of State as to whether any special terms are to be given to the Service in consequence of that reduction. That is the only class that has so far been affected in any considerable measure.

*Mr. Zafrulla Khan.*

11,390. Is it correct that in those two Provinces the reduction is due solely and entirely to financial considerations of the Province ?—It was a retrenchment measure.

*Sir Reginald Craddock.*

11,391. Then there is only one other question I wanted to ask about, Proposal 183 deals with the Indian Civil Service, the Indian Police and the Ecclesiastical Department. There is no mention there of the Indian Medical Service ?—(Sir *Samuel Hoare*.) That is so.

11,392. Some time ago, I think Sir Samuel told us that there was still correspondence going on with the Government of India about that, early in the summer ?—Yes.

11,393. It is a very important Service, as the Secretary of State will agree ?—Yes.

11,394. And also on account of its connection with the Army it is very essential that it should be considered part of the security Services because so much depends upon it ?—Yes.

11,395. There is an answer that you gave, Sir Samuel, on the 24th July, 1933, in answer to Sir Ernest Graham-Little : "All Members of the Indian regular Services, both military and civil, whether or not they hold His Majesty's Commission, are in the same position as regards the payment of pensions in respect of their Indian Service. The position is

that these pensions have been in the past and are now charged to Indian revenues alone and it is proposed that they should continue to be so charged under the New Constitution" ?—Yes.

11,396. That is an answer which you gave comparatively recently, in July last ?—Yes.

11,397. But in paragraph 185, the reference is to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State. Appointments by the Crown do not seem to find any place in paragraph 183. Are they considered to be appointed by the Secretary of State for the purpose of the control ?—I am not quite sure whether I have followed Sir Reginald's point. Is it this, that the Indian Medical Service is not included in paragraph 183 ?

11,398. Yes ; that is one point. The other point is that persons appointed by the Crown are not included in paragraph 183, nor are they included in 182 ?—We could bring them in though under 188.

11,399. That refers only to a civil capacity, whereas your answer the other day put them all on the same footing ?—Yes ; on the military side no difficulty arises, does it ? It is a reserved subject.

11,400. Yes ; but in the Indian Medical Service it arises ?—I quite agree with Sir Reginald. I am in this difficulty about the Indian Medical Service, that there still is correspondence going on between the Government of India and the India Office. Substantially we are agreed, but there are certain outstanding details still to be discussed. It is a question that obviously the Committee will wish to consider, and as soon as I am ready I am prepared to discuss it with them ; but I agree with Sir Reginald that it is probable that paragraph 183 will have to be re-drafted in view of our discussion about the Indian Medical Service.

*Mr. M. R. Jayaker.*

11,401. May I suggest to the Secretary of State in this connection, while he is on this subject, that I wish to draw his attention to the majority recommendation of the Services Sub-Committee at page 66 of the First Round Table Conference Report ; this Committee consisted

of Indians and Britishers both and this is their recommendation: "Subject to paragraph 1, the sub-committee are of opinion that in future there should be no civil branch of the Indian Medical Service; and that no civil appointments either under the Government of India or the Provincial Governments should in future be listed as being reserved for Europeans as such." May I suggest that the Secretary of State should take into consideration this recommendation when he is considering the whole question of the Indian Medical Service?—We have taken it, Mr. Jayaker, very fully into account. The problem, however, is a very difficult one. The problem, if I may state it in a sentence or two, is this: Firstly, we have to provide enough Doctors for the Army; secondly we have to provide enough Doctors for the Army Reserve; thirdly, we have to provide enough Doctors for the Services, particularly the European Services. The further we have gone into the question the more we have been convinced that in order to carry out those obligations, recruitment must go on for the Indian Medical Service, and that there must be posts for the Indian Medical Service that will enable them to fulfil those three conditions. I state the problem rather crudely to-day in those two or three sentences to show that it really is a difficult problem of hard facts and that whatever arrangements are made, those three conditions must be met, namely, the Army demands, the Army Reserve demands, and the demands of the Services for Medical ministrations.

11,402. But outside those three requirements, there has been no further recruitment for the general purposes of the Medical Service?—I would prefer not to go into a question of that kind until I can go into the whole question completely. I will only say to-day that you must make the Service sufficiently attractive in order to get your recruits in for those three purposes, and that factor must be taken into account.

Lieut.-Colonel Sir H. Gidney.

11,403. Secretary of State, is it not a fact that if the recommendations of the Services Committee were carried out in this matter, and the Provincial Govern-

ments had to supply British Medical Officers for their Medical Service, it would become a very prohibitive cost?—I was not thinking so much of the cost, though I agree that is a very serious issue; I was thinking rather of recruitment. Here, again, it is a practical question as to what is the best method for getting the men into the Service who are required for those three purposes.

Archbishop of *Canterbury*.

11,404. May I ask for information, Secretary of State, who at present appoints the Indian Medical Service? It is not in the All-India Services or the Provincial Services, as we have them put before us here?—It is the Secretary of State.

11,405. Does it rank as an All-India Service?—Yes.

11,406. Why is it not included in 35?—It is not included for this reason, that there have been these special problems arising about the Medical Service, and we have not been in a position to make definite recommendations. Your Grace, it is primarily a military service and so far as it is a military service, it is a reserved service. The question that has been discussed at some length in the past, and no doubt we shall discuss it again, is the question of the civil appointments.

Sir *Abdur Rahim*.

11,407. There are two other military Medical Services, the R.A.M.C. and the I.M.D.?—The R.A.M.C., of course, is War Office, British Army, and the I.M.D., Sir Malcolm tells me, is a Subordinate Service.

Sir *Austen Chamberlain*.

11,408. Are the whole of the Doctors of the Army in India appointed by and subject to the War Office at home?—No; there is the R.A.M.C. for the British personnel. There is the I.M.D. for the Indian personnel.

11,409. I thought you just said the I.M.D. was under the War Office?—No, the R.A.M.C. is under the War Office.

Marquess of *Salisbury*.

11,410. But you said the I.M.D. was a military service, did you not?—Yes.

11,411. Under whom is it?—Under the Secretary of State.

11,412. It is part of the Indian Army?—Part of the Indian Army.

Sir *Reginald Craddock*.

11,413. They have the King's Commissions, have they not?—Certain Members holding civil appointments outside.

Mr. *Zafrulla Khan*.

11,414. May I suggest that the question really is not so much who shall be recruited into the Indian Medical Service and under what conditions; there is no trouble about it; naturally the Secretary of State will continue to recruit into the Indian Medical Service. The question is whether the Secretary of State should have power to continue to prescribe and force the Provinces to employ a certain number of these Indian Medical Service Officers into their Civil appointments?—Yes; that is so.

11,415. And whether that is consistent with the Medical Department being transferred under the Constitution and being made a Department to be administered by the Provincial Governments?—Yes.

Lieut.Colonel Sir *H. Gidney*.

11,416. Is not the I.M.D. under the Secretary of State—all its regulations?—Yes; ultimately, as part of the Indian Army it is; that is the I.M.D., which is the Indian Medical Department, which is the Subordinate people in the Medical Service.

Miss *Pickford*.

11,417. Does the Secretary of State at present in recruiting for the public services follow generally the rate of Indianisation as recommended by the Lee Commission?—Yes.

11,418. But that is a matter of convention and not laid down by any Statute?—No; it is in no Statute.

11,419. Is it contemplated under the White Paper that this shall be left to the discretion of the Secretary of State

so that he can accelerate or retard that process?—Yes. It is under the White Paper proposals intended to continue the existing procedure.

11,420. But as a matter of convention?—Just as it is now—to continue the procedure.

Sir *John Wardlaw-Milne*.

11,421. I want to ask the Secretary of State one question in regard to paragraph 49, first of all, in which it is stated that the various Headings of Expenditure shall be subject to discussion in both Chambers. Amongst those is No. (vi), salaries and pensions. In view of the statement which he has made this morning would he tell me why it is desirable that matters of pensions which cannot be voted upon should be discussed in the Chambers? Is that not a little likely to give rise to possible misunderstandings—to have a discussion on a matter of this kind, which the Secretary of State has made such statements upon this morning?—It is the procedure that we have proposed for this category of reserved subjects. Perhaps the most conspicuous case is the Army; there, we do propose that discussions should be allowed, but that the expenditure should be non-votable. We have taken the reserved subjects together and we have treated them in the same way. That is really the answer.

Marquess of *Reading*.

11,422. That has been the practice hitherto, has it not?—Yes.

Marquess of *Reading*.] Under the Act, it is open to the Governor-General to permit that discussion, and he always has permitted it in my experience.

Sir *John Wardlaw-Milne*.] In the case of the Army?

Marquess of *Reading*.] Yes. I am only giving that as an instance.

Sir *John Wardlaw-Milne*.

11,423. I was going on to suggest that there is a difference in a large matter such as the question of expenditure and the matter of pensions?—I would say there cannot be any possible doubt about the decisions in any of these cases.

would not distinguish between one and the other, and I would suggest to Sir John Wardlaw-Milne that there is rather a political danger in isolating one particular question. It has seemed to me in my experience at the India Office that if you do isolate a particular question from the other questions you concentrate upon it much more fire than you would have if it was not so isolated.

11,424. Then with regard to paragraph 184—I do not want to press this question if in fact the Secretary of State is going to bring up a set of proposals about it, but there it is stated that the officers of the Provincial Departments will be controlled by the Secretary of State, and in regard to those of the external departments, they will be under the Governor-General. All I wanted to ask is whether they will be appointed by the Secretary of State?—Yes. It is simply a question as I said before, of constitutional drafting; in either case it is the Governor-General or the Viceroy acting at his discretion, but, in one case, the Service comes within the ambit of the Constitution and in the other case it is within the field of paramountcy and outside it.

11,425. Then, one last question with regard to paragraph 188, to which reference has already been made—the question of Officers who are available for a post which would ordinarily be appointed by the Secretary of State. It is stated that they “may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State.” Is there any particular object in that being “may” instead of “shall”? Should they not have that as a right if they occupy these posts? I do not quite follow the object of making it optional. Has the Secretary of State considered that? It is not very clear to me at any rate as to at whose option this is to be?—(Sir *Findlater Stewart*.) The proposal is that the Secretary of State should have the right. I think one reason for not putting it in the form that they shall have all the rights of a member of the Indian Civil Service is that it is impossible in practice to do everything. For example, members of the Indian Civil Service at present subscribe to a Family Pensions

Fund under very elaborate rules. You cannot take a man in at the age of 45 and make him eligible for things of that sort; it is impossible to make the story complete; but the intention is that so far as protection is concerned the two categories shall be put on the same footing.

11,426. May I put my question in this way: Does not the use of the word “may” jeopardise that security or possibly jeopardise that security?—No. It is a case, I think, where “may” means “shall” subject to practical possibilities. I am told it reproduces Section 98 of the Act at present and they do in practice always have that protection.

Sir *John Wardlaw-Milne*.] Still the conditions in future are to be rather in control. I suggest for consideration whether that security is not jeopardised by the use of the word “may”—that is all.

Lord *Eustace Percy*.

11,427. Secretary of State, could you explain to me what are roughly to be the functions of the Provincial Public Service Commission in regard to recruitment? They are to conduct the examinations, but are they to have any final say in what those examinations shall be—what shall be the qualifications of a candidate?—(Sir *Samuel Hoare*.) I would have thought that the Provincial Public Service Commission would be given general instructions by the Government to recruit such and such a number of officials, and within those general instructions the Public Services Commission would have such latitude as the Government gave it; but I do not contemplate the Public Services Commission laying down, perhaps against the approval of the Provincial Government, rules of its own.

11,428. But take a contrary case like the Medical Service of a Province. Would the Government, the Cabinet, of the Punjab, for instance, be able to lay down to the Public Services Commission that no recruit was to be accepted unless he had a medical degree from the University of the Punjab?—I would have thought off-hand that that was a



general rule that the Government could lay down.

11,429. Then the Cabinet could also lay down that a certain service should in its opinion be recruited by nomination and not by examination?—Yes; that, I understand, is the present practice.

11,430. Then what precisely is the guarantee in respect of recruitment offered by the Public Service Commission?—I have never emphasised myself the guarantee side of the activities of the Public Service Commission. I have thought that its main use was to take these posts out of the personal purview of individual ministers, and in that way to save the ministers a great deal of trouble and tiresome pressure. I have always regarded the Public Service Commission more from that point of view than I have from the point of view of an actual guarantee.

11,431. That is what I meant by guarantee. It is a guarantee against politics entering into recruitment, but, if all the conditions of recruitment, even down to the prescription of nomination, may be laid down by the Cabinet, and cannot be laid down by the Governor except on the advice of his Cabinet, I do not see how you can keep politics out of it?—You keep politics out of the individual case. Is not that so?

*Sir Austen Chamberlain.*

11,432. Supposing the Governor laid down a rule that all appointments should be by nomination, is there anything to prevent that?—It would be possible, under the White Paper, certainly for a Governor to take that action, but it would then be for the Public Service Commission to recommend names within that condition, and, in that way, Sir Austen will see that the individual cases would be taken from individual treatment, and put under what we should hope would be an impartial body.

*Lord Eustace Percy.*

11,433. But, in practice, the Secretary of State will probably admit that when you come to nomination, the nominating body, appointed as the Public Service Commission, would, as in similar cases in this country, almost inevitably be a

departmental body such as the body which nominates Inspectors of Schools at the present moment, and, the moment you get it inside the Department, you immediately get the possibility of pressure on the Minister?—Is there Ministerial pressure with Departments of that kind? I have never known it in my experience here.

*Lord Eustace Percy.*] No, not here. Would I be right in saying this, that the position of the Civil Service Commission here has been built up gradually on the basis of its personal prestige, and that that will be the case with the Public Service Commission in India, and that their real influence will depend almost entirely upon their personnel, and on the kind of position they are able to build up as advisers to the Government.

*Major Cadogan.*

11,434. Who will appoint the personnel of the Public Service Commission?—The Governor on his own discretion. To go back to your question, Lord Eustace, I would agree generally with what you suggest.

*Lord Eustace Percy.*

11,435. If you have got to find individuals whose personal influence will be of that kind, and if you have to build up the position of the Public Service Commission on the personal influence of such people, do you contemplate with equanimity the appointment of ten Public Service Commissions, all with such exalted positions in India, that they will enjoy the same prestige as the Civil Service Commission here?—We have some experience. We have the experience of the Central Public Service Commission, and we have the experience of the Public Service Commission in Madras, and in each case the Commissions have, so I understand, worked well. No doubt some of the Indian delegates will add from their own experience their own views upon these Commissions, but my experience goes to show that they have worked well. We have circularised, I think, every Provincial Government, and I think, without exception, every Provincial Government has wished to start the same kind of organisation.

11,436. But, in fact, only Madras has started one of its own volition up to now?—Yes.

Mr. *Zafrulla Khan*.] As a matter of fact, the Punjab Legislative Council has passed a Bill authorising the setting up of a Public Service Commission, and they are only waiting for the new Constitution to come into force to start it as from the date of the new Constitution, and I am not perfectly certain, but, I think, power is given in that Act to the Governor to specify what appointments shall be made through the Public Service Commission—not to the Cabinet, but to the Governor.

Lord *Eustace Percy*.

11,437. Would I be right in saying that if you were asked to set up simultaneously eleven Civil Service Commissions in England, Wales and Scotland, you would hesitate to do so, and wonder whether you could get the personnel sufficient for such appointments?—In the first place, it is the difference between a population of 270,000,000 and a population of 45,000,000, but I am not basing my answer on that at all. If it was found impossible in some of the smaller provinces to find this personnel there is no reason why provinces should not combine. That is provided for.

Dr. *B. R. Ambedkar*.

11,438. There is nothing to prevent a Public Service Commission being appointed for one province or for two provinces?—No; we do make provision for that purpose.

Lord *Eustace Percy*.

11,439. Have you ever considered the possibility of establishing something in the nature of a Federal Public Service Commission at the centre representing the Provinces on a Federal basis, but unifying recruitment?—We can hear the views of the Indian delegates upon a question of that kind. My own view, from what enquiries I have made, is that most of the provinces will want to have these Commissions of their own.

Sir *Abdur Rahim*.] That is so.

Mr. *Zafrulla Khan*.] If an Inspector of Schools was to be appointed to the Punjab, no one in the Punjab could be

expected to ask a Federal Public Service Commission to appoint one for them.

Lord *Eustace Percy*.] I was not suggesting that, but I do not want to get into discussion.

Archbishop of *Canterbury*.

11,440. Under Proposal 199 the Governments are required to consult these Public Service Commissions on matters such as have been raised by Lord Eustace Percy. Supposing a Provincial Public Service Commission entertains the strongest possible objection to a proposal made by the Provincial Government, at present it has no power to control the Government. Has it any power, or do you propose to give it any power, to refer any matter about which it feels very strongly to any other body such as the Federal Public Service Commission, or the Secretary of State, or otherwise?—I do not think you could possibly have the right of appeal to the Federal Government from a provincial organisation of this kind. I think if you did it would strike very much at the roots of provincial autonomy, and there would be great resentment anyhow in some of the provinces. Further than that, there are the two conceptions of the Public Service Commission; the one that it should have executive power; the other that it should be only advisory. We have chosen the latter alternative, namely, that, quite definitely, the Public Service Commissions that we contemplate should be advisory. I can quite see there are arguments to be used for either of those alternatives. Let me suggest only one to His Grace as an argument against a Public Service Commission having executive power. There is a great risk in that case that you will get a new kind of dyarchy in a province, and that you may get (to take the most difficult and critical instance of all) the Public Service Commission taking one line about communal arrangements, and the Government taking another line. On that account, and also on account of the fact that the existing Public Service Commissions in India have been advisory and have worked well, and have exercised a great deal of influence, even though they have had no executive power, we have thought it wiser to keep them as advisory bodies.

11,441. I was not suggesting executive powers, but whether there would be any power to see that there would be some degree of uniformity in the different provinces, and whether the advice of a Public Service Commission on an important matter, if it was against the Government, might have any reference to some other co-ordinating authority?—It is very difficult to see what that co-ordinating authority should be. I think there is every kind of objection to be urged against the Federal Government being the Court of Appeal in provincial questions of that kind.

Marquess of *Salisbury*.

11,442. There is another kind of Court of Appeal which the Secretary of State might consider, namely, the publication of the advice of the Public Service Commission?—Yes.

Marquess of *Salisbury*.] So long as the Public Service Commission advise in private, and are overridden in private, it might come about that they would be treated with very little more than contempt by the Minister, but, if it was known that whatever they said would be published, then there would be a real security that their advice would be attended to.

Lord *Eustace Percy*.

11,443. The real danger seems to me to be this that, possibly, if you have ten Public Service Commissions in India, the advice that you get from the academic persons on those Commissions will not be advice which will carry nearly the weight which the educational advice of the Civil Service Commission in this country carries to-day. It is advice which might be rejected. It is the danger of having an academically weak Commission advising the Government, that the Government may have to take the matter into its own hands?—I can only say once again that the two existing Public Service Commissions have worked well, and they have not been academic.

Lieut.-Colonel Sir *H. Gidney*.] They have worked very well.

Lord *Eustace Percy*.

11,444. Their advice has been given by their academic Member?—I do not know

what Sir Eustace means by "academic Member," but there have been men on both those Commissions who have been very closely in contact with public life at many of its angles.

11,445. I agree?—Even if Lord Eustace's criticisms are correct (and I do not want to dogmatise on a question of this kind) I do not know quite what alternative it is that he suggests.

Archbishop of *Canterbury*.

11,446. Would the Secretary of State consider giving an answer to Lord Salisbury's suggestion?—I have great sympathy with what Lord Salisbury said.

11,447. That would largely meet my point. May I understand the Secretary of State replies to Lord Salisbury's suggestion that he considers it very favourably?—Yes, certainly. I have great sympathy with it, and I have always felt in matters of this kind, judging from our own experience here, that publicity is a great safety valve.

Sir *Hari Singh Gour*.

11,448. I want to ask the Secretary of State whether he has also adverted to the other side of the question that if the advice given by the members of the Public Service Commission, either individually or collectively were to be published they would not be free to give the same independent advice upon individual cases which they would be free to do if they knew that their advice would be treated as in confidence?—I think one would certainly have to leave some discretion to someone. Quite obviously you could not possibly make a rule that all the proceedings of a body of this kind should be published, but I think within that limitation one might insure their voice being heard if they wished their voice to be heard.

Lord *Eustace Percy*.

11,449. I do not want to get into a discussion. May I simply say my general idea is this: The tendency in this country has been to bring all the Government Departments, except the Technical Departments, increasingly under one Civil Service examination laid down by academic authority?—Yes.

11,450. It has been done within the last 20 years in the case both of the

Foreign Office and the Board of Education. It seems to me that India will find the same thing that except for technical Departments and certain outside appointments like Inspectors of Schools, the best course is to recruit under one general examination, and not to have special requirements. If that be so, the point of having a Provincial Commission for the great bulk of the Departments will go, and for the whole recruitment, subject, of course, to conditions that a province should have its own people speaking its own language, and so on, the examination for the bulk of all the Departments could be conducted by a Central Commission, and it would be a valuable Federal organ built up by consultation between subordinate Civil Service Commissions in the provinces and the Centre. That is my general idea?—I should be very glad in the course of our discussions, or my examination, to hear the views of other Members of the Committee and the Indian Delegates upon a question of that kind.

*Mr. Morgan Jones.*

11,451. I am not quite sure that I followed the implication of one of the answers which Sir Samuel Hoare gave earlier in regard to compensation. If I have misunderstood it I apologise. Do I understand that it is proposed that someone (either the Secretary of State or someone else) should be in a position to compensate for loss of prospective office?—Yes, within the terms of the answers I gave earlier this morning.

11,452. Is there any parallel for that in the English Civil Service?—I could not say offhand. I do not know whether there is or not. It has always been admitted to some extent in the Indian Service.

11,453. Does the cost of this compensation for prospective office fall upon the Indian revenue?—Yes.

11,454. May I enquire how far down the hierarchy of officers does this right of compensation extend?—It is just that kind of difficulty that made me say you must take every case upon its own merits. It is not a new issue at all, Mr. Morgan Jones; this is an issue that has been in existence for many years.

*Mr. M. R. Jayaker.*

11,455. Is the Secretary of State aware that Sir John Kerr in his statement confined the compensation to only one man for one post? He did not go down below. May I just ask your attention to Sir John Kerr's statement on this point? In Volume II, at pages 33 and 34, this is what he said; he did not make a higher claim than this; of course, we think that even this is very high. "I said the other day that I thought there would be no immediate saving. We have gone into the figures and we think we can safely say that there would be an immediate saving for this reason. In a province with five Commissioners at Rs. 3,000 a month, if you abolish those five posts you get an immediate saving of Rs. 15,000 a month. Under the scheme which we have placed before the Joint Select Committee an allowance of Rs. 500 would be attached to five posts on the time scale to compensate the service for the loss of the Commissioners' posts. The cost of those five allowances would be only Rs. 2,500, so there would be an immediate saving of Rs. 12,500 a month." What I am suggesting to the Secretary of State is that even this statement does not go so high that the compensation could percolate down to the bottom of the Service, but should be only given to the next person who was an expectant?—Generally speaking, that is so, and I, in saying that this right should be continued in some form, am not making in any way an extravagant claim.

*Mr. Morgan Jones.*

11,456. So that in cases where on account, say, of the necessity for retrenchment, a particular post may have to be abrogated, the question of possible compensation would have to be taken into account?—Yes; certainly; and Mr. Morgan Jones must keep in mind the way that right has been interpreted during the last 15 years. Sir Reginald Craddock pointed out that certain posts have been retrenched, but that so far no question for compensation had been admitted.

*Lord Snell.*

11,457. Just two questions, in regard to compensation. Suppose that in the

process of reorganisation some section of the India Office Staff were redundant, let us assume they are in the Department of the establishment of the Indian Army : How would their acquired rights in regard to promotion and so on be dealt with?—I think there again they would have to be dealt with case by case.

11,458. Suppose there was a group—assume there might be a group?—I would certainly say that, supposing under these new arrangements a large part of the Staff of the India Office were abolished owing to changes in the Office, the general claim to compensation must be admitted. As to how that claim should be applied, I think that must be a case of taking the cases on their merits.

11,459. Then, in regard to the Medical Service, has the Secretary of State contemplated the possibility of there being established an Indian Medical Board that would endeavour to exclude British qualified men in the same way as the Doctors' Trade Union in this country excludes people with foreign qualifications.

11,460. As Lord Snell will remember there has been a good deal of controversy between some of the medical authorities here and some of the medical authorities in India about qualifications. I have been doing my utmost in the last year or two to try to make a *modus vivendi* between these bodies, and I hope in the next two or three years such an arrangement will be made. It is because the position is still somewhat indefinite that we have left the treatment of the medical qualifications rather open in the Clause dealing with discrimination—I think one of the Clauses between 120 and 130.

11,461. I specifically excluded the reference to the difficulty, but may we assume from Sir Samuel that the outlook in that matter is favourable for an arrangement?—I think it is much better; I would not go further than that.

Mr. M. R. Jayaker.

11,462. Has not a Bill been recently passed by the Indian Legislature?—A Bill has been recently passed. I have not got the debate or the full details about it yet, but it is all a step, as I hope, in the direction of agreement.

Lieut.-Colonel Sir, H. Gidney.

11,463. Has not the Bill that has recently been passed in the Legislative Assembly decided that there will be a four-year limitation to the reciprocity of medical qualifications?—It is just because of that very question that I was rather cautious in the answer that I gave just now. It is an improvement certainly in the direction of agreement, but this Committee has obviously got to consider what, if any, safeguards are needed after the period specified in the Act that recently was passed.

11,464. What I was trying to get from you, Sir Samuel, was that since this Bill has been passed limiting it to four years, is there not a danger that after that period elapses there will be a refusal to recognise other cases, as Lord Snell tried to indicate in his question?—I think there might be a possibility; I would not go further than that. I think I would suggest that this is really a question of discrimination rather than of service rights. I am going to give evidence about discrimination in a few days time and I think perhaps it would be better to deal with medical qualifications and other professional qualifications then.

Mr. Cocks.

11,465. Secretary of State, with regard to paragraph 178, I notice that the salary of the advisers is left blank; at what stage in our proceedings is that to be filled in, or have you a figure in your mind to suggest to the Committee?—I have not formed a very definite opinion about that; I do not think it is a question of very great importance; I do not much mind. We could make a suggestion perhaps, at any time.

11,466. Seeing that the salaries are to be paid by moneys provided by Parliament does that mean that the individual appointments must have the approval of Parliament?—No; it would be as it is now.

11,467. Names would be submitted to Parliament?—No. I do not know whether there was in Mr. Cocks' mind the fear that we were going to involve ourselves in a heavy expenditure for this new kind of Council. That is not so. It appears to me that the Council will be

smaller in numbers and involve the British taxpayers in substantially less expense than the Council does at present. The numbers are reduced and the question of salary must depend to some extent of course upon the duties that they are expected to perform.

*Archbishop of Canterbury.*

11,468. Arising from your answer, Secretary of State, paragraph 189 does not mean a statement of names, but only of vacancies made and of recruitments made. Does that mean names, because you said just now that no names would come before Parliament?—I think His Grace was under the impression that Mr. Cocks was dealing with paragraph 189. He was dealing with paragraph 178, dealing with the Secretary of State's New Council?

11,469. Yes; but I understood you to say that no names of appointments made would ever come before Parliament?—Of the Secretary of State's Council.

11,470. I beg your pardon?—I used the term "Council"—council generally.

*Sir Austen Chamberlain.*

11,471. I suppose the appointments will be made as to the present Council, that is to say, not subject to the assent of Parliament, but they will be always known to Parliament and the action of the Secretary of State might be challenged in Parliament if desired?—Yes.

*Marquess of Salisbury.*

11,472. The money provided by Parliament—is that an annual vote on the Estimates in the usual way?—Yes, it would be a part of the Office Vote.

*Mr. Cocks.*

11,473. Under the Membership which may be between 3 and 6, is there any proportion suggested for Indian Members?—We leave it free, but there is no intention of exclusion in any way.

*Mr. M. R. Jayaker.*

11,474. At present there is a specific provision, is there not, that these will be Indians?—No; it is quite open. In actual practice, there always has been

representation of Indian Members and they have been extremely valuable.

*Sir Austen Chamberlain.*

11,475. The amount of Indian representation has been added to by Secretaries of State from time to time in their discretion?—Yes, and on the whole it has tended to increase.

*Sir Austen Chamberlain.*] I found it two, and left at three, if I remember rightly.

*Mr. Cocks.*

11,476. In the next paragraph, seeing that the Services' Sub-Committee of the Round Table Conference recommended that the recruiting and controlling authority in future should be the Government of India and not the Secretary of State, could you state what were the reasons which caused the authors of the White Paper to depart from that conclusion? In other words, what are the objections to making the authority the Governor-General?—There was no unanimous opinion at the Round Table Conference. So far as I remember, there were the three points of view expressed. One, that the Secretary of State should continue to recruit; two, that the Viceroy should recruit; three, that the Federal Government should recruit. There was no kind of unanimity of opinion either in the Conference or in the Committee. The view of the Government in a sentence or two is this: We feel that the two objects that we must keep in mind, are, first of all, a sufficiency of suitable recruits; secondly, as little change as possible during the very difficult years of the initiation of the constitution. Keeping those two objects in mind, we take the view that there would be a risk of not getting the recruits that we require for these very important services if we made a change in the methods of recruitment. Secondly, in order to tide over what must necessarily be a very difficult chapter in the history of the new constitution, namely, the initial years, we propose that no change at all should be made during a period, say, of 5 years. At the end of that five years, there will have to be an inquiry into the whole position, based upon actual experience. I should very much hope, myself, that an inquiry of that kind would not take

the form of a public or semi-public commission upon which acute political attention would be concentrated perhaps for several years, but that it would be an inquiry upon the actual merits of the position based upon the experience of these 5 years; and that in the meanwhile both in the interests of India and in the interests of this country, which has still got many great stakes in India, as few changes as possible should be made during this initial period. That in a few sentences is the general position upon which we have based our proposals as to recruitment.

11,477. Turning to the question of accruing rights, do you hold the view, from what you have said, that in certain circumstances the definition of "accruing rights" given by the law officers of the Crown, and which was quoted by Sir John Kerr in reply to questions 230 and 235 may be inadequate?—I would prefer to take that definition with the comment placed upon it by my predecessor, Lord Peel.

11,478. In exercising his discretion in cases of that sort, will the Secretary of State have to secure the consent of his Advisory Council?—Yes, as he does now.

11,479. Will the Public Service Commission be consulted before a decision is given?—That would be a matter for the discretion of the Secretary of State.

11,480. I was wondering whether the Secretary of State could give the Committee a kind of picture as to what would actually happen in such a case as

this: supposing 20 Commissionerships were abolished and 20 officers of the next seniority applied for the pay and pension rights of the Commissioners, what actually would be the procedure?—The procedure would be what it would be to-day, namely, that the Committee of Council would go into these claims and would make a recommendation.

11,481. Does that mean that each case would be decided upon its merits, or would some definite rule be made which would apply to all similar cases?—I should think each case would be decided on its merits, but I would not like to exclude the possibility of dealing with a class as a class.

11,482. On paragraph 192, when this was brought up before the recess, it was felt, I think, that the exact meaning of that paragraph was somewhat obscure. I was wondering whether the Secretary of State could clear that matter up. Particularly, what exactly is the authority in India competent to pass such an order as that of March 8th, 1926, and secondly, what is the authority in the last line being other than the provincial government?—I think I had better circulate a note explaining exactly what is meant by March 8th and so on. I will do that.

11,483. And the second question about the sanction of such authority, you said yourself on the previous occasion that in practice it meant provincial governments. Could it possibly mean any other authority?—We will cover that point in the note; we will make it quite clear.

(After a short adjournment.)

Lord Hutchison of Montrose.

11,484. There are only two questions I would like to ask. One is: In Proposal 189 it is said that there will be an enquiry into the working of the Civil Service on the expiration of five years after the commencement of the Constitution Act. Does that mean the Constitution Act as referring to the Provincial Governments, or to the whole proposals in the White Paper?—(Sir Samuel Hoare.) It means whatever is in the Constitution Act, and certainly it means the whole Constitution.

11,485. But is it not possible that under the Constitution Act if it were passed there might be a period before anything to do with the Federation came into being?—Yes.

11,486. In which case five years would have elapsed before probably any commencement had taken place of a control such as is visualised here at the Centre?—I think that might be so, and I think if there were considerable delay between the two stages in the Constitution that date might have to be modified.

11,487. The other question I would like to ask is, how far is the Commission dealing with the Service there going to take over the present duties of the Inspector-General? I am talking rather in relation to the police. The Commission, I understand, will be empowered to deal with promotions and movements from one place to another. How far will that take over the duties of the Inspector-General?—The Commission would not go into questions of that kind at all. Sir Malcolm will just amplify that answer which I have given. (Sir *Malcolm Hailey*.) It is contemplated that the Public Service Commission would deal only with promotions in the Provincial Service and not with subordinate services.

Lord *Hutchison of Montrose*.] I see. Thank you.

Earl of *Lytton*.

11,488. This morning we had some questions about the Secretary of State's advisers who are to succeed the present Secretary of State's Council. I am not yet quite clear in what respects these new advisers will differ from the Members of the present Council. At the present time the Members of the Council attend regularly in the office they are members of the Committees, and they discuss policy, and also draft the despatches of the Secretary of State. Is it contemplated that the advisers will fulfil all or any of those functions?—(Sir *Samuel Hoare*.) To the extent that I described this morning, remembering, for instance, the difference that will come about when India is responsible for its own finance, and when the safeguards of the future are no longer the safeguards possessed by the India Council, but set out in any scheme of the Constitution. So far as the Services are concerned, the other main field in which the Council act, there I think the position will be very much what it is now.

11,489. It really will be the same procedure as at present except that there will be a withdrawal of certain powers which are now exercised by the Council, and which will not be exercised by the advisers?—There will be this difference of function, and there will be the necessary changes in the number, and so on, but,

generally speaking, we look to this body of advisers (call it a Council if you wish) still to remain the safeguard for the Secretary of State's Services that the Council is at present.

11,490. But you said, quite rightly, this morning that the question of salary would depend largely upon the definition of their duties. I wanted to know whether they would be as the present members of the Council are in regular attendance at the office, and not merely summoned occasionally when their advice is sought?—I think they always would be regular attendants, always remembering their difference of function.

Sir *Austen Chamberlain*.

11,491. It would be a whole time occupation. They would be no more allowed to take outside work, or only to take outside work of a voluntary kind as the present members of the Council are?—Generally speaking, yes. I would prefer not to give a completely rigid answer. Supposing, for instance, with this change in their functions it was found suitable to pay them substantially less salaries, and to expect them to work less hours a week, then I am inclined to think, subject to what other people say, that there might be a greater latitude in allowing them to undertake outside work than there is at present; but, speaking generally, I regard this small body of experts not as a body of people who will just come in and out occasionally to the India Office, but people who really will continue to co-operate with the Secretary of State in the fields for which their functions are appropriate.

Earl of *Lytton*.

11,492. I want to ask one question with regard to the Services. Will the present right of retirement on proportionate pension be continued in the future?—Yes, and for the period of this five years that is contemplated in the White Paper.

11,493. For a period of five years?—For the period of five years. Let me make it clear. People entering in this period of five years, everybody who is already there, for ever, as long as they are in the Service.



11,494. As it is now. But at the present moment those who were in the Service prior to the 1919 reforms were given the right to retire on proportionate pension if, after experience of those reforms, they decided that the conditions had been so altered as to justify them in retiring. That, I suppose, is to continue after this change for a period of five years?—No. It is to continue for those officials as long as they are in the Service. It is to continue for new officials who enter during the period of five years.

11,495. But for those who are in the Service now, after the passing of this Act, is it to continue for the whole of their Service?—Yes.

11,496. Then I would like to ask the Secretary of State whether the declaration which is now required of those people before they can retire will continue to be required in the same terms?—We have contemplated that it should continue.

11,497. I do not want to express my opinions now, but I would just like to put this point in order that the Secretary of State may have it in mind. It was my experience when in India that those who made use of this privilege were not, in fact, those for whom it was intended, namely, the elder men who had spent the greater part of their life under the old system, and who found the new arrangement so uncongenial, that they asked permission to retire; but it was rather the younger men, and, especially, the ablest men in the Service, who were still young enough to be able to get other employment, and who, although not in any way dissatisfied with what was going on, or the changes that had been made, nevertheless felt uncertainty with regard to the future, and, when an opportunity of taking other employment offered itself, they preferred the certainty of that employment to the uncertainty of continuing their service in India. Those people were all required to sign a declaration saying that they were retiring because of dissatisfaction with the reforms. I maintain that, in the first place, that was insincere, and that the requiring of such a declaration is an invitation to people to make an insincere declaration, and, secondly, that the statistics based upon these retirements are erroneous, because I have

often seen it quoted as evidence of the dissatisfaction with the reforms that so many people have retired, rather than work them, whereas I know from my own experience that a large proportion of those who so retired for the reasons I have mentioned, and not at all because they were dissatisfied with the reforms. I do not want to ask you the question, but I would just like to mention that experience of mine in order that when the time comes the question of continuing this declaration or not may be considered?—I will certainly take note of what Lord Lytton has said, and I am much obliged to him for having raised the point. I think the best course would be for me to consult the Government of India and some of the senior officials about it, and see what their view is.

11,498. Thank you?—But certainly upon what he has said there seems to be a good case to be made either for not having a declaration of this kind, or for having it in a somewhat different form.

*Sir Austen Chamberlain.*

11,499. Secretary of State, I find it difficult to get any clear picture in my mind of the exact position which the Public Service Commissions are to claim under the new scheme. Are they to be to the Government of India and Provincial Governments what the Civil Service Commission in London is to the Government here, or are they to have, on the one hand, greater powers and, on the other hand, less powers?—I suppose here it might be said the Civil Service Commission is almost entirely an examining body. Is not that so? I am not very familiar with the work of the Civil Service Commission.

11,500. I think so. On the other hand, as a Secretary of State I could not appoint anybody to my office except with a certificate from the Civil Service Commission, in the first instance. Once he was in my office I could promote him at my own discretion, but I could not bring him into my office except on the certificate of the Civil Service Commission that he had passed the examination that was required?—Except by laying an Order in the House under an Order in Council. I remember now the position. I would imagine that the Public Service Commission in India

would have somewhat wider powers, and would be something more than an examining body; for instance, that it should be consulted upon certain disciplinary questions, and so on. I am inclined to think after the discussion of this morning, and the suggestions that have been made, that I had better circulate a note as to exactly what the two Public Service Commissions in India actually do now, and what are the changes that we propose there should be for the new Public Service Commissions under the White Paper, and I will take into account the differences between our conception of the Indian Commissions, and the actual procedure of the Civil Service Commission here. I do not know whether that would meet Sir Austen's view. I think perhaps that would be the more convenient way of doing it.

11,501. I think so, and I am much obliged to the Secretary of State. May I ask him to bear in mind in preparing his paper any circumstances in which he proposes that the Indian Commission should have less authority than our own Civil Service Commission?—Yes, certainly.

11,502. That arises from some answers that were given earlier in the day?—Yes.

Marquess of *Salisbury*.

11,503. I venture to hope that perhaps the Secretary of State might consider closely a question that was put to him just now by Lord Hutchison, as to how the work of these Commissions would fit in with the ordinary work of the Inspector-General of Police as to transfer and appointment and promotion?—Yes.

11,504. I do not see on the face of it what the proper answer is to that. They seem to me to overlap rather, and I have no doubt that could be thought out?—We will make points of that kind as clear as we can.

Marquess of *Salisbury*.] Thank you.

Sir *Austen Chamberlain*.

11,505. Now, Secretary of State, may I refer you to Proposal 190: Does that merely register or repeat the present practice, or does that make any innovation?—It repeats the present position to this effect. This is what actually happens now, but it happens under

the delegation powers of the Government of India Act. Our proposal is that in future the same state of affairs should continue, but it should continue under direct statutory authority.

11,506. But the authority by which the appointing authority acts will be statutory instead of the Secretary of State?—Instead of by delegation rules made by the Secretary of State under the Government of India Act.

11,507. But the number of appointments covered, or the services to which this applies, will not be altered. With the autonomy of Provincial Governments will not their power be widely extended?—May Sir Findlater deal with this? (Sir *Findlater Stewart*.) Let me take a particular case: The subject of irrigation under the White Paper would become a Provincial subject under the control of Provincial Ministers. At present, the Irrigation Department is manned in its upper ranges by an All-India Service. The implication of this White Paper is that the irrigation recruitment in the future will be to a Provincial Service, and in that sense and to that extent Proposal 190 will extend the range of services over which the Provincial Government has power of recruiting and controlling. Of course, that is in the upward direction. There is no question that in the downward direction they can create new services for new purposes or within their own Provincial field, but to the extent that this White Paper transfers, so to speak, services which have hitherto been All-India Services—to that extent Proposal 190 would give the Provincial Government control over new services.

11,508. That is how I understood it, Secretary of State. Statements have been made in evidence before us that since certain services were transferred to the Provincial Governments no Europeans have been recruited for them. Is that true in the case of the existing transferred services?—(Sir *Malcolm Hailey*.) That is substantially the case. If you take, for instance, the Education Department, the number of Europeans that have been appointed to the Provincial Education Departments are very few indeed. The tendency has been to substitute Indian recruitment almost entirely.

Marquess of Salisbury.

11,509. And the Medical Department too?—No, Sir. The Indian Medical Service remains untouched so far. I am referring to cases such as the Public Works, roads and buildings, and the Education Department.

11,510. Forests?—No, Sir; the Department of Forests is transferred only in two Provinces. Agriculture and Veterinary and Departments of that kind. The result certainly has been that there has been very little new European recruitment in them and they have become very largely Indianised. In the Education Department of the United Provinces, for instance, there are now only four or five European officers left and they are not being replaced by European officers.

Sir Austen Chamberlain.

11,511. Now, Secretary of State, I want to ask you a question of policy, having got the facts. You are going to transfer other services of such importance, for instance, as irrigation, which Sir Malcolm has just mentioned. I think it is common ground to everybody who has considered this that the scheme which we are considering is a great experiment. Is it not in your opinion of the first importance that in the establishment of this new experiment the kind of wisdom and the experience accumulated under the old system should be available to the new authority, and would you be satisfied to make this large additional transfer of services without taking any security that a proportion of Europeans should continue to be recruited for them?—(Sir Samuel Hoare.) The difficulty with some of the services is the difficulty that arises from the state of affairs just described by Sir Malcolm Hailey, that in some of these services there are very few Europeans already left.

11,512. Those are the services already transferred, as I understand it?—(Sir Malcolm Hailey.) Yes. (Sir Samuel Hoare.) Yes.

11,513. For better or worse that is done?—As to the services to be transferred, there is, of course, the fact that for some years to come there will be senior European officials, I suppose, in all of them. (Sir Malcolm Hailey.) Yes,

L109RO

particularly the irrigation and forests. (Sir Samuel Hoare.) Particularly in the Irrigation Department. That to some extent meets the obvious difficulties of the early years.

11,514. How far would that be affected by the provision of Proposal 189, that at the expiration of five years there is to be a statutory inquiry into the question of future recruitment?—The inquiry we contemplate would be a general inquiry, competent to consider questions of that kind and any other question but I think I should be right in saying that for the next five years at any rate, in a very important Department like the Irrigation Department, there will be this nucleus of senior British officials.

11,515. Does not it strike you as requiring some explanation, that European recruitment has practically ceased as soon as the transfer was effected?—I think we have frankly got to accept the fact that Indianisation has taken place and is taking place over a great field of the administration in India.

Lord Rankeillour.

11,516. Might I ask: Would none of the civil posts in, say, the Irrigation Department come under the schedule that is contemplated that we talked about this morning?—No.

Mr. M. R. Jayaker.

11,517. May I ask the Secretary of State whether, since this process of Indianisation began by the employment of Indians more and more in the transferred Departments, they have received any complaint that the standard of efficiency or competence has gone down?—I could not say that I have received any considered comments one way or the other.

Sir Austen Chamberlain.

11,518. Secretary of State, I do not want to press you if you are unwilling to give an answer, but do you think that the standard in the Education Department or Departments is as high now as it was before the transfer, and that they have suffered nothing from the failure to recruit any Europeans since the transfer?—I think these big changes are bound to have some bad effects. I think that is inherent in any

changes of this kind, but I suppose we accepted the possibility of such effects when now many years ago we embarked upon a programme of Indianisation. Here in these White Paper proposals we are making substantially no new proposal at all about the services; we are going on with the Lee percentages, and I think the criticism that Sir Austen is suggesting, if it is a valid criticism, is really a criticism much more against what has been happening for 20 years than what is going to happen in the next 5 years.

11,519. That may be so, but if what has happened in the last 20 years has had bad effects, the Secretary of State perhaps will agree that that is something that we ought to take into consideration now in an attempt to guard against or to mitigate the larger reforms when we are making them?—I could not myself go so far as to say the effects have been bad; one has got to take many things together. You have got to take into account the reactions upon public opinion generally, and in saying that I am not stating my own isolated opinion, but I suppose I am stating very much what was in the mind of the Simon Commission. The Commission (Major Cadogan will correct me if I am wrong) must have heard a good deal of evidence about all these questions, and they did recommend the transfer of these services without the kind of additional safeguards that perhaps are in Sir Austen's mind.

Earl of Lytton.

11,520. Is it not a fact that this change that Sir Malcolm Hailey referred to which has come about in recruitment since the services have been transferred have not really yet had much effect one way or the other upon the administration, because it only means that as vacancies have occurred in the last 10 years at the bottom, Indians have come in, or where Europeans have created a vacancy, they have not been filled by Indians; but would it not be true to say that you cannot yet give a definite answer one way or the other with regard to the effect on the services of recruitment during the last five or 10 years?—(Sir Malcolm Hailey.) I think that most of us would hesitate to give an answer for the reason which Lord Lytton has

indicated. All the senior members of most of these services are still Europeans, and carry on the same traditions of the service as before. We shall not be able to say what has been the full effect on the administration of the Indianisation of the services until the senior posts are also held by Indians. When that time comes we shall be able perhaps to make some sort of judgment; I do not think we can do so at present.

Lieut.-Colonel Sir H. Gidney.

11,521. Is it not a fact that recruitment in the Education Department has ceased for many years entirely?—Not entirely; there have been some isolated appointments for inspectorships and the like, but for practical purposes one may say that the European element is disappearing from the upper branches of the service.

11,522. And you are replacing them by the provincial element?—That is so.

11,523. As regards the Forest Department, is it not a fact that there has been no competitive examination in England and it has only taken place in India for many years?—The Forest Department is still manned by an All-India service except in two provinces. It does happen that for various reasons there has been little fresh recruitment, but that is not on account of the transfer of the department, but because for various reasons, such as reduction of work, the cadre has not needed refilling.

11,524. But there has been no recruitment from England for many years?—Very little recruitment, two or three posts only, I think.

11,525. Has the Forest Department, in your opinion, in the province that you administered, in any way suffered?—It has been carried on by the same hands as before with a somewhat smaller service, so that it would be impossible to make a judgment.

Dr. B. R. Ambedkar.

11,526. Might I intervene just for a moment to point out that the result to which Sir Malcolm Hailey has referred, namely, the denudation of the services of the local element, as soon as they are transferred to ministerial control is largely due to the fact that this transfer has also been accompanied by a reduc-

tion in the scale of salary. When a service has become provincialised the Minister has adopted a lower scale of salary than was obtainable formerly, and, consequently, the smaller scale of salary has not attracted European candidates?—Yes; they have substituted, in other words, Imperial for provincial services.

Dr. B. R. Ambedkar.] It is the salary that has made the difference—not the transfer.

Lord Eustace Percy.

11,527. They have recruited in some years on special salaries in one or two instances?—In some instances, yes.

Marquess of Salisbury.

11,528. But you do not doubt, do you, that if the White Paper passes in its present form, all the Europeans will disappear gradually? As the vacancies come they would all be filled by Indians?—I should expect to see just the same change in the departments still remaining for transfer which I might take as typical, such as the Irrigation and Forests Departments, as in the departments we have already transferred, namely, a very rapid Indianisation that would leave us with still a very considerable number of Europeans in the service, but all the fresh recruits would, I think, be on a provincial service basis and be Indians.

11,529. And you say that you cannot judge what the effect on the efficiency of the service will be until the thing has thoroughly worked itself out. Was not that what you said?—Yes, and it would be, I think, unjust from any point of view to try to make a final judgment until you have seen more fully the effect of Indianisation as represented in the filling by Indians of the supervising and administrative posts at the top of the service.

Marquess of Salisbury.] I do not think one ought to pronounce a final judgment, but if there is a very considerable risk of deterioration in these important services, do you not think that some precaution ought to be taken?

Sir Austen Chamberlain.] I put the same question to the Secretary of State; it is really my question.

Marquess of Salisbury.

11,530. I beg your pardon?—Certain local governments have, of course, pressed strongly for the retention of the European element in one service in particular—the Irrigation Service; the Punjab Government pressed for that strongly. That I think has come out in evidence before the Committee already.

Lord Rankeillour.

11,531. It really amounts to a question of whether you should extend the schedule beyond its present limits?—If I may say so, it rather comes to a question whether you should transfer the service or not.

Sir Austen Chamberlain.

11,532. Secretary of State, I feel there is a little difficulty, because there are questions of fact about which Sir Malcolm has been good enough to inform us. There is also a great question of policy, and I feel that on the question of policy I ought to address myself to the Secretary of State. We are making a vast change of immense consequence to the future of the peoples of India. We in this country are divesting ourselves of a responsibility which has hitherto rested directly upon us. Ought we not, in this great change, to do what we can to secure continuity of policy and a sufficiency of those influences which have built up and maintained the unblemished reputation of the Indian Civil Service?—(Sir Samuel Hoare.) It is not very easy to deal with a big question of policy of that kind by question and answer. It is not that I am not ready to give an answer at once, but it is for this reason: A question of this kind raises issues other than service issue. For instance, one of the bases of our proposals is the proposal of provincial autonomy—the very foundation, in fact, of our scheme. One has got to take into account the reactions upon provincial autonomy and upon public opinion in the provinces of restricting to this extent or to that extent the field of provincial administration. Sir Austen's question, although it is specially directed to the service side of the question, really does affect the whole of that problem. Let me give him an instance: By far the

most important department of those that we are transferring is the Irrigation Department; indeed the only two big departments that we are now transferring, that have not already been transferred, are Irrigation and Forests. Of those two, the Irrigation Department, I should think, was (politically, at any rate) the more important. Suppose, now, one did not transfer the Irrigation Department or suppose that one tied it up with a number of restrictions that might easily be defensible from one point of view, but might have the result of very much restricting the field of provincial autonomy. Actually, in the Punjab, which is the Province, I suppose, of all others, where irrigation chiefly matters, it would in practice mean, taking I suppose more than one-third of the whole province out of the field of provincial autonomy. The irrigated tracts in the Punjab (Sir Malcolm will correct me if I am wrong) I think, are more than one-third of the whole province. (Sir Malcolm Hailey.) Yes, about one-third. (Sir Samuel Hoare.) Sir Austen will therefore see that there is this great risk of making provincial autonomy insignificant and ineffective if you try to tie these services up with many restrictions; still more if you do not transfer a big department of this kind that really covers a great deal of the day to day life of the province. I suppose it was those considerations that prompted the Statutory Commission to make these recommendations. We have followed almost exactly the recommendations of the Simon Commission. I fully realise the difficulties and the dangers that there may be in changes of this kind, but taking, as I say, one political aspect of the problem with another, we have thought that this on the whole was the wiser and the safer course. I would not like to dogmatise, and I would like the views of my colleagues, both British and Indian, upon it, but that is our general position.

Sir Austen Chamberlain.

11,533. My Lord Chairman, I will not ask the Secretary of State any further questions upon that matter, but will reserve them for the time when we come to our discussions, when we can develop it; but perhaps I might be allowed to

say that I have been endeavouring to form an opinion and not endeavouring to express an opinion not already formed in the questions which I have put to him or by the answers which he has given, and I certainly make no suggestion and have no intention of suggesting that a subject like irrigation should not be transferred; it is merely whether some additional condition of transfer should be imposed. I will leave it at that. I want to go for a moment to the Statutory Commission proposed to be appointed five years from the commencement of the Constitution Act by section 189. The Secretary of State has already had his attention called by Lord Hutchison to the fact that different parts of the constitution must, according to the scheme which he has laid before us and the views he has expressed, come into operation at different times. How long the delay will be before the whole constitution as contemplated by the White Paper is in fact operative, the Secretary of State has himself repeatedly said that he could not predict?—Yes.

11,534. Accordingly, to take the extreme case which is put by Lord Hutchison, if you fix in the Act a date of five years from the passing of the Act for the creation of this Statutory Commission, it might actually come into existence before the constitution itself—before the constitution itself was in full operation?—Yes.

11,535. Is there any doubt about that?—No, none. I was not suggesting any doubt.

11,536. Then is it not unwise to fix in the Act that this Statutory Commission shall be created in five years when you do not know whether at that period the material which the Statutory Commission is to investigate will be in existence?—I think there is a great deal to be said against fixing a date. First of all, there is the difficulty explained by Lord Hutchison and Sir Austen Chamberlain, namely, that here we are putting in a specific date when we do not exactly know the date of the conditions within which the whole constitution will come into operation. Moreover, if you put a date into an Act of Parliament, you do then have, I am afraid, the kind of agitation that started over the Statutory Commission, long before

the period of 10 years, contemplated in the 1919 Act, had elapsed. Those are very strong arguments against putting in a date of this kind. On the other hand there is this fact that cannot be ignored, that public opinion in India, both central and provincial, is very sensitive upon all these issues connected with the services. To take, for instance, provincial opinion, provincial opinion is very strong upon provincial autonomy being made effective, and it is very suspicious of any kind of diarchy in which the real seat of power is not in the hands of the provincial government; that being so, it did seem to us that there should be some kind of reassurance to public opinion in India, both provincial and central, that there should be an inquiry based upon actual experience at a not very distant date. If no date is put in, I am afraid the general opinion in India would be that this is an arrangement fixed for ever; the anomalies that are bound to exist in a system of this kind are going on for ever; there is never going to be a change; and I think you would see that Indian public opinion would resent the absence of a date of this kind.

11,537. Can I carry the Secretary of State thus far with me, that it would be useless to have the Statutory Inquiry until sufficient experience has been gained of the working of the new system to afford it a basis for a report?—Certainly.

11,538. That it is at least possible that, say, in five years from the passing of the Act there will be but one or two years' experience of the working of the new system at the centre?—I suppose it is possible. I would not like to be drawn into an opinion as to whether it is likely to happen or not.

Mr. Zafrulla Khan.

11,539. I do not want to interrupt, Sir Austen, but I merely want to know the meaning of the expression "the commencement of the operation of the Act." Does it mean the enforcement of the Act? The expression used is "the commencement of the Act"?—Probably the same procedure would be adopted as was adopted after 1919, namely, that dates were fixed for the commencement of various Parts of the Act.

Marquess of Reading.

11,540. That is when the Act comes into operation?—Yes, and in the case of the 1919 Act when certain Parts of the Act came into operation.

Sir Austen Chamberlain.

11,541. This does not mean the date at which the last Part of the Act to be brought into operation begins?—No.

11,542. But it means the date at which the Act first begins to operate, does it not?—Yes.

Archbishop of Canterbury.

11,543. And the whole constitution, including the Federal constitution?—No, it does not go so far as to mean that.

Sir Austen Chamberlain.

11,544. At any rate, for my purposes, it is quite sufficient that obviously it does not mean that the Commission will necessarily have five years' experience by which to judge the new system?—As at present drafted, I do not think it does.

11,545. Do you think any period less than five years will afford sufficient experience for a report of this kind of such a commission to have real value?—I have always taken the view that anything short of five years would be inadequate.

11,546. Now may I just remind the Secretary of State of Sir Malcolm Hailey's observation a little time ago, that you would not really be able to express an opinion on the effects of transfer and the cessation of European recruitment until the Indians had risen to such seniority in the service as to be occupying the highest posts, the real controlling posts, in a sense, and again, with those preliminaries, do you not think it is possible to insert in an Act five years after the commencement of the Act that this inquiry shall be held when it follows from those things that the material upon which alone sound judgment can be formed, will not be available in that time?—This inquiry was to be mainly directed to the future recruitment of the Secretary of State's services, and what we had in mind was to obtain the experience during the next five years as to whether a change in that recruitment would be necessary or not.

11,547. What do you expect to have available five years hence that you have not now?—A great deal, I think. I think we shall have the 'five years' experience of the autonomous governments in the provinces. We shall see how things are going; we shall see what is the state of public opinion; we shall see what is the state of law and order. My own view would be that when the immediate excitement of the initiation of the constitution has blown over, both sides will look much more calmly at these problems than they could now. I would have said that in about five years time we should have quite a considerable amount of data for the specific point for which the Inquiry is needed, namely, what is the best way of recruiting officials for the Secretary of State's services in the future.

Mr. M. R. Jayaker.

11,548. Is the Secretary of State aware that this clause has been taken by many Indian publicists to be a compromise between the Indian demands that British recruitment should cease at once, and the opinion held by publicists here that it should go on *ad infinitum*?—Yes.

Sir Austen Chamberlain.

11,549. Is that the purpose of the clause?—No; the purpose of the clause is not in the least intended simply to be a paper compromise, but it is a clause intended in the interests of security all round, both Indian and British, to give us the data upon which we can come to a decision in  $x$  years time. I do not say there is anything verbally inspired about five years; that seemed to us to be about the time, after a good deal of consultation with prominent governments and Government officials both in India and here.

11,550. This is my last question; would the Secretary of State reconsider the opinion that five years is a reasonable time in the light of what has been put to him to-day, and particularly of the fact that five years apparently means five years from the time when the Act or some portion of it begins to operate, and not merely five years from the time when the whole system is in being?—I think one can easily meet Sir Austen's

second point by giving Parliament or the Secretary of State power to alter the date in the light of the coming into operation of a particular Part of the Act. I think that is a technical point that could be met in a technical way of that kind. If Sir Austen means in the former part of his question that it would be safer to put no date at all into the Act, then I would ask him to take into account the wider political considerations that I have alluded to this afternoon and the intensity of the feeling in India upon questions of this kind, all pointing to the wisdom of putting in a date of some kind.

11,551. I only think that those considerations cut both ways, and I would ask the Secretary of State to have this in mind: In making this great change and this great experiment, if you can make the old slide gradually and without friction into the new, I think you do a great deal for the successful work of the new, but if, even at the start, you say that the provisions which you have set out are to be dug up and re-examined in five years time and the whole thing is again to be in the melting pot, that you keep all these questions simmering and boiling for the whole of those five years?—That is perfectly true and obviously we should all pay great attention to what Sir Austen says upon a question of this kind. May I, however, with great deference, ask him to keep this kind of detail in his mind: It is not solely a question of five years from the Indian point of view; it is a question of many more years. To put it into a concrete form, a European official who is enlisted under these conditions in the next period of five years, will be in India serving under those conditions, we will say, for 40 years, 30 years anyhow; and it is that kind of consideration that is very much in the mind, I believe, of some of my Indian friends, and if Sir Austen would give his very acute mind to this kind of question that I have raised I will certainly give my much less acute mind to the points he has raised, and I hope my Indian friends will do the same.

Sir Austen Chamberlain.] A very reasonable offer couched in very flattering terms. With that I conclude my examination.



Sir Hubert Carr.

11,552. On the question of the effect upon the recruits in the next five years : It seems to me that if a man joining during the next five years knows definitely there is going to be an inquiry into the whole terms of the service five years hence, it is very likely that you will not get the same kind of recruit that you have been getting in the past. The normal expectation must be, I take it, that the Secretary of State's control will relinquish in a degree and it seems to me questionable whether the recruit that you are wishful of securing to-day will be the same class if he knows there is going to be an inquiry five years hence, or if he knew, on the other hand, that he is joining a service where conditions will continue until Parliament might decide that it was necessary to hold an inquiry at some future unknown date ?—That is very much the position that is taken up in the White Paper. The last word is with Parliament. But Parliament must come to its decision after some inquiry. Parliament could not come to a decision of this kind—very technical and very complicated—simply *in vacuo*. There is this further point that Sir Hubert should keep in mind, that whatever may be the effects in five, 10, or 15 years time, the officials' rights under which he came into the service are guaranteed to him.

Sir Hubert Carr.] Yes ; but that was not quite the point I tried to make. It was that if Parliament had definitely to inquire into it, in five years hence then these changes which are not likely to be in favour of the men recruited to-day will come into being definitely five years hence, whereas, if he comes into the service and knows that nothing will be done until Parliament, it may be, 15 or 20 years hence, says, "The Constitution is now working so well and satisfactorily that we can relinquish the safeguards which we held"——

Sir Hari Singh Gour.] It may be 12 months hence.

Sir Hubert Carr.] I think that is unlikely.

Sir Hari Singh Gour.

11,553. That depends ?—These are all questions upon which I should like to

hear the views of the Committee and of the Indian Delegates. My own view is that it would be wise to put in a date.

Marquess of Reading.] On what Sir Hubert Carr says, assuming a man joins the Service within the first year or the second year of the operation of the Act, whatever happens after that Inquiry will not affect his rights in any way.

Sir Hari Singh Gour.] They are made.

Sir Hubert Carr.

11,554. I have heard it said that something may happen like in Egypt, where the Civil Servants may be told on that analogy, "Now we are going to transfer recruitment to the Services to the Federal Government and you must either agree to be transferred or we will give you compensation." That would interfere with the recruits in the next five years ?—I do not think that has anything to do with it. The men who come in will have their rights guaranteed throughout the whole of their service.

Sir Austen Chamberlain.

11,555. And throughout the whole of their service they will be under the terms on which they enter ?—Yes.

Lord Eustace Percy.

11,556. If I may put the point in another form, I would ask the Secretary of State to bear in mind that five years or anything like the order of five years is about the worst period you can take from the point of view of maintaining recruitment in this country in these days because people do try to determine on their future career about five years before they take the Indian Civil Service examination, and if they know that just about the time they were going up for it the new inquiry is to take place, I think you may very well fall hopelessly between two stools ?—I will take a point like that into account, certainly. I can only say it is very difficult to dogmatise upon what conditions are going to produce good recruits and what conditions are not going to produce good recruits. I have had analysed for me more than once the recruitment figures of recent years with the All-India Services. It is very difficult to make any generalisation as to what is going to happen and what is not going to happen.

11,557. The lack of careers in this country may have a very great influence on it?—All kinds of considerations of that sort enter into it.

Archbishop of *Canterbury*.

11,558. Is Proposal 189, either in its essence or in the prescription of five years the result of any recommendations or decisions of the Round Table Conference?—No, I do not think the point was ever considered at the Round Table Conference. It is the result, however, of a good deal of consultation between the Government of India and ourselves.

Mr. *M. R. Jayaker*.

11,559. In this clause you are trying to meet, as far as you can, the majority recommendations of the Services Committee, that the recruiting shall stop and in future the recruiting and controlling authority should be the Government of India?—Yes.

Mr. *N. M. Joshi*.

11,560. May I ask one question about the services which are already transferred and provincialised?—Yes.

11,561. You were asked questions about the non-recruitment of Europeans for these transferred services?—Yes.

11,562. May I ask as a matter of information whether of the new Indian recruits who are usurping the place of the Britishers, most of them possess the British University qualifications which the British recruits used to possess?—In the transferred subjects in the Provinces?

11,563. Yes?—I could not answer that.

11,564. I am speaking of the Education Department, for instance. Do not they possess the same British University qualifications which the European recruits used to possess?—(Sir *Malcolm Hailey*.) Many of them possess quite good British University qualifications. Some of them possess only Indian University qualifications.

11,565. May I go further and ask whether the Government of India have considered this, that the new Indian recruits possess greater British University qualifications than the old British recruits used to possess? You can get an

Indian with a first class British degree for the salary that is offered, whereas you cannot get a British candidate with a third class degree, with the result that you are getting a better class of recruit than you used to get formerly?—I would not like to generalise further than to say that I do know of very many of the Indian recruits who have taken very high degrees with honours in the English Universities. I am not able to say how far, as a whole, they compare.

Mr. *Zafrulla Khan*.

11,566. May I put this to you, that having regard to the fact that the services that have been transferred have also been provincialized, and consequently the salary and other conditions are not now the same, the choice really now, with that salary and with those conditions, is between an indifferent European and a good Indian? A good Indian is available under those terms and a good European is not; and therefore the decision is between a good Indian and an indifferent European, and the Governments make that choice?—The placing of the services on that basis has undoubtedly restricted the choice of Europeans.

Mr. *N. M. Joshi*.

11,567. With regard to the advisers of the Secretary of State for India, the body of advisers will have definite power as regards the conditions of the European services?—(Sir *Samuel Hoare*.) You mean the All-India services?

11,568. The All-India services. Does it not really mean that the conditions of the All-India services cannot be changed without the consent of the services themselves, if we take into consideration that also another condition laid down is that out of the three advisers two shall belong to the services? Does not it really mean that the conditions of the All-India Services will be determined by members belonging to the Services?—The first answer to Mr. Joshi is that we do not make the restriction that he has just suggested.

11,569. It may happen?—It may happen, and it may not happen.

11,570. I quite agree that, legally speaking, it may not happen, but it is

quite possible that these two members will belong to the All-India Services ?—It is possible that they may have belonged to the All-India Services, but they will be retired. My first answer to Mr. Joshi is that the restriction is not imposed which he has just suggested. My second answer is that even if two of the advisers were ex-Indian Civil Servants, it by no means follows that they would take a partisan view of questions of this kind. I can tell Mr. Joshi that my own experience has been that my ex-civilian members of my Council look at these questions of personal grievance and status and so on that do come to my office with most meticulous impartiality, and I do not at all believe that the scales will be weighted one way or the other were this arrangement to take effect.

Mr. M. R. Jayaker.

11,571. The third alternative possible is that one of the two (two at least must have held office, and so on) may be an Indian. That alternative is open ?—Both of them might be. There is nothing to stop one or both.

Mr. N. M. Joshi.

11,572. I did not intend to make any suggestion that your future advisers will take a partial view, but I wanted to point out the constitutional position. Two out of the three members will belong to the Services, and they will have a definite veto upon the action of the Secretary of State so that they really determine the conditions of service for the All-India Services. That is the constitutional position ?—I dare say in theory it may be so. The practice is very far removed though from that description.

Lieut.-Colonel Sir H. Gidney.

11,573. Secretary of State, in your opinion, do you think that the present covenant entered into between the Secretary of State and the Civil Service and the other allied Services is a satisfactory one ?—There is not any covenant in the strict sense of the term.

11,574. Is not there some agreement that they sign with the Secretary of State ?—Sir Malcolm will correct me if I am wrong, but all I remember of it is that the official gives certain under-

takings, for instance, that he will not acquire and hold land in India; survivals of the 18th century, and so on. (Sir Malcolm Hailey.) That is so. We sign a covenant which binds us to do a large number of things. It binds the Secretary of State to do little or nothing.

11,575. That is exactly my reason for asking that question, Sir Samuel. Do you think that covenant or agreement should be modified so as to be made more explicit ?—(Sir Samuel Hoare.) I have never attached very much importance to this covenant. I have regarded it as a survival of the 18th century, of historical rather than of practical interest.

11,576. Then you do not think it requires any modification or alteration ?—I should just let it be as a historical relic.

11,577. Regarding paragraph 183 of the White Paper where you specifically mention three Departments: you have already commented on the absence of the Indian Medical Service. Do I understand that there is any likelihood, resulting from the negotiations taking place to-day between you and the Government of India, that the Indian Medical Service were likely to escape the Secretary of State's protection ?—No, certainly not. Even if they wished they could not escape it.

11,578. But there are negotiations going on, and I think public opinion in India is very strong that with regard to the Medical Service it should be under the control of the Government of India, and I think there is a strong feeling that there must have been some reason why it was excluded from Proposal 183 ?—No, there is no more reason than that. This is one of the innumerable administrative questions we have been discussing for some time, and I should hope in the course of quite a few days to be able to make a statement about it; anyhow in the course of the next few weeks.

11,579. With regard to the pensions we were talking about a little while ago, when you said the assurance was given by the Secretary of State for India, does that refer to all pensions, or only the pensions that relate to the higher services ?—It was an answer referring to the All-India Services.

11,580. Then is there no guarantee or implied guarantee, or Secretary of State's responsibility, for the stability of the pensions of the gazetted officers and the other subordinate officers?—It may be my slowness, but would Sir Henry just put that question again. Is his question: Does this moral obligation extend over pensions other than the Secretary of State's Services pensions?

11,581. Yes?—The answer is Yes.

11,582. Secretary of State, I think most people in the Service have expressed a very great doubt, or a feeling of insecurity, regarding the pensions. When Sir Austen asked you a question about this you did not seem to think that it was necessary to incorporate it in the Act. Would it not clear away all this doubt if such a clause were incorporated in the Act?—What sort of clause?

11,583. A clause guaranteeing the pensions of all three Services?—No. I thought my answers this morning quite clearly stated my view. I have nothing to add to them. I think it is unnecessary. Secondly, I think it would be impossible to isolate this obligation from other obligations of the same kind, and, thirdly, I think it would be politically unwise because it would be suggesting both to Indian opinion and to British opinion that the Indian Governments were not going to meet their obligations.

11,584. I refer you to paragraphs 190 and 191 which I interpret as being sequential. I may be wrong. If they are, paragraph 190 states that the Federal and Provincial Governments control all appointments other than those by the Crown and the Secretary of State in Council. Paragraph 191 says they will enjoy all service rights existing at that date. Do I understand you to mean by those two paragraphs that those Departments which are not appointed by the Crown or the Secretary of State would have their vested and accruing interests protected? I am referring to the large bulk of Government servants in India who do not come under the category set out in Proposal 183?—You will find their rights set out in Part II of Appendix 7.

11,585. Do they cover all these Departments, Sir Samuel?—I think they do, but I will confirm my answer by looking in detail into it. I think they do.

11,586. You will forgive me pressing this point?—Certainly.

11,587. The reason why I return to it again just shortly is because their vested and accruing rights are being openly violated to-day. In the battle between efficiency and economy in India all those who have entered their Services on certain terms of promotion and pay are now being forced to accept lower rates of pay and lower status so their vested and accruing rights are not being respected at all by the Local Government or by the Government of India. I would like the Secretary of State to make a note of that if he would kindly do so?—Certainly.

11,588. There is one more question I want to ask, and that is with regard to the transfer of the Forest and Irrigation Department of Engineers. Secretary of State, you were pressed with certain questions on this matter as to the wisdom or the unwisdom of the transfer of these Departments. I will not touch on those, but might I suggest for your consideration that, although these Departments must be transferred if Provincial autonomy is not to be a farce, would it not be possible to incorporate in this transfer that a certain percentage of the appointments to these two Departments should be Europeans?—That is going back once again to Sir Austen's questions. I would prefer to leave it to-day at the point at which I left it in my answer to him. We can revert to the question when we come to our discussions later, but I have not really anything to add to what I said to him earlier in the afternoon.

11,589. Again, is there anything in the conditions relating to those two Services that a percentage must be Europeans?—I suppose the Lee percentage would cover them.

11,590. Could not this percentage continue to cover them up to a certain period?—I think that is the kind of point we ought to consider. In answer to an earlier question I said they were covered by the Lee percentage. Sir Henry said "Could not that continue

for a period?" I said in answer "That was a point we must take into account."

*Sir Abdur Rahim.*

11,591. The Lee Commission's recommendation was regarding recruitment in Britain or India, not as regards the race of the candidate. Is not that so?—No; I think it went farther than that.

11,592. Regarding Civil servants, for instance, it was only a question of recruitment either in Britain or in India?—No, it made definite percentages between Indians on the one hand, and Britons, on the other.

*Sir Austen Chamberlain.*

11,593. And there is nothing in the White Paper to maintain those percentages?—No, but it is our intention to maintain them in our own Services.

11,594. Did not the Lee Commission's percentage cover, for instance, the Irrigation Branch?—Yes, and so long as the Departments remain All-India manned Departments we maintain the percentages. I agree when a Department is transferred—

11,595. You are proposing to transfer Irrigation, are you not?—Yes.

11,596. And make it a Provincial Service?—Yes.

11,597. Do you transfer the obligation of percentages recommended by the Lee Report when you transfer the right of appointment?—That is just the point Mr. Zafrulla Khan raised, and I said it was a point we ought to consider. Perhaps I had not given it full enough consideration before. I will consider it.

*Sir Austen Chamberlain.*] It was intended to be covered by the questions I put earlier.

*Mr. Zafrulla Khan.*

11,598. As soon as those services become provincialised the question must arise whether on the terms the provinces offer you will be able to get any suitable Europeans?—Yes.

*Mr. M. R. Jayaker.*

11,599. The scheme you have presented in the White Paper in the sections relating to the Services is a very wide departure from the scheme which was re-

commended by the Services Committee?—The Services Committee, as I said earlier in our discussions to-day, was not unanimous upon any of the issues.

11,600. I mean the majority of the Services Committee?—Yes. It should, however, be remembered that I think we all agreed during the Round Table Conferences that it was not a question of majorities and minorities. It was much more a question of collecting the voices of groups, and certainly then there were these two or three different opinions expressed and fairly strongly held by this or that group in the Committee.

11,601. I merely want to know the fact, not that I am commenting on the departure?—No.

11,602. I want to ask you this: The gist of the suggestion made by the Services Committee was that a line should be drawn between the recruits up to the passing of the Constitution Act, and those who were recruited after, and that those who were recruited before the Constitution Act should be amply safeguarded in respect of all their rights and privileges by the Secretary of State, and those who were recruited after should be transferred to the Governor General acting at his own discretion. That was the gist of the recommendation, and I am asking you whether you do not think that that would be a much simpler arrangement to work consistently with the rights of those who have come into the Service previous to the Constitution Act?—I would say that that was a view held by a considerable number of the members of the Committee, but I would not go so far as to say that it was held by a majority; nor would I go so far as to say that other views were not very strongly expressed by other groups in the Committee, taking the alternative that Mr. Jayaker has just put before the Committee. Even that alternative took two forms, one of its forms being that recruitment should be by the Viceroy; the other form that that took was that recruitment should be by the Viceroy on the advice of the Ministers, namely, by the Federal Government. There was not even unanimity in the group upon those two points, but setting aside what actually was the grouping in the Committee itself, I would say to Mr. Jayaker that the

reasons that have made us make these proposals are, we believe, in the interests principally of India itself. We believe that the fewer changes we can make during the first chapter of the constitution the safer from every point of view ; we believe also that it would be starting the constitution in very dangerous and 'unfortunate conditions if, in the early stages, recruitment for these services fell seriously off. Now rightly or wrongly, services and those connected with the services—and by that I mean those connected with the places where they are recruited, universities, public schools and so on, are very conservative in their views and they are very suspicious of changes being made in the conditions of service. We came to the view that that being so, it was much wiser not to excite suspicions that we believe are really unnecessary and are going to prove as we hope to be ill-founded, but to keep the conditions as they are over this initial period, and then as I say at the right moment have an inquiry as to the future based upon our experience.

11,603. What I was going to ask you, Secretary of State, was this : Do you think that the arrangement you are proposing here would work under the Minister ? That is the point I was driving at. For instance, under your scheme, if I may just give a few details, the pay, pensions, and allowances would be entirely under the control of the Secretary of State and non-votable. Then dismissals, suspension, reduction, removal, also, would be outside the control of the provincial and the federal minister ; even posting will be outside the control of the minister. Any order of a superior official would be appealable to the governor or governor-general ; there would be no power to keep even places vacant ; there would be reserved posts, and the ministers would not be able to retrench except after paying compensation, and there are similar other provisions. I am asking you whether you are not producing a dualism in your anxiety to protect the services and thereby making the services more and more unpopular instead of identifying them with the Minister in charge so that he could always regard the services as his own agents which he was entitled to protect before the Legislature ?—I think

whatever plan we adopt we have got to accept the fact that there must be anomalies, and there must be a certain measure of dualism as a result of past history. Mr. Jayaker himself has just admitted that need by saying that existing rights up to the commencement of the constitution must be safeguarded. The only difference therefore between us is whether there should be a further period or not before the coming into operation of the constitution for new entrants. We are both agreed that for existing people their existing rights must continue.

11,604. But is it not possible to make the two consistent, that whereas you protect their existing rights by pension and dismissal, removal or censure, for all administrative purposes you pass them under the control of the provincial or federal Minister, subject to the right of appeal to the Secretary of State ; is that not a possible way of consistency between the two ?—I would have thought if you are going to maintain existing rights you cannot pick and choose between them.

11,605. They all do not stand upon the same level ?—They may not all stand upon the same level, and I would not certainly urge that they are all of the same importance, but I think if you once start picking and choosing between them you will disquiet the services very much. I think you will make recruitment much more difficult in the future, and I think you will lay yourself open to the charge of a breach of faith. That being so, I hold the view very strongly that we must maintain all existing rights and that we must really leave it to the common sense of the Governors, and of the Secretary of State, if ever he has any, and of the Provincial Governments to work this, I admit, anomalous scheme in a reasonable way.

11,606. But you do not apprehend the danger which some of us do that in actual working it may amount to this, that the Federal or the Provincial Minister in defending an action before the Legislature may be able to get out of the difficulty by putting the whole blame on his agents, on the ground that he has no control over those agents ?—No, frankly I do not contemplate a contingency of that kind.

*Sir Austen Chamberlain.*

11,607. You assume common sense on the part of the Minister, too?—I assume common sense on both sides. I do not know whether it is too great an assumption to make, but I do continue to make it.

*Mr. M. R. Jayaker.*

11,608. Then I just want to ask one or two questions about paragraph 182. I suppose you speak of the compensation there as including the compensation on the abolition of a post, on which we had discussions during the morning?—Yes.

11,609. That assumes, I imagine (correct me if I am wrong), that the Minister will have a right to retrench posts, subject to compensation?—Yes, within the limitation of whatever posts are scheduled.

11,610. He would have no right to abolish a post which is within the schedule: is that so?—Not of his own independent initiative.

11,611. Then how does the question of compensation arise if those posts are never to be abolished except under the Secretary of State's sanction?—Compensation would then arise if they were abolished under his sanction.

11,612. Then about compensation, you told us your views in great detail, that every case shall be considered on its merits?—Yes.

11,613. But may I in this connection ask your attention as to whether you approve of certain principles in this connection which were mentioned by Sir Tiruvalangudi Vijayaraghavacharya speaking on behalf of the Indian Officers' Association at the end of last term's evidence, which you will find in question 11,409 in volume 11 C, page 1297. I will just read one short paragraph from that evidence and ask you whether you approve of the suggestion which he has made in this connection. He was answering a question put by me at page 1297 as to how compensation should be given. This is what he said: "My view is that ordinarily no claim to compensation should arise where selection posts are abolished, but where, in Lord Peel's words, administrative changes result in a loss of selection appointments so con-

siderable as seriously to prejudice reasonable prospects, there should be a claim to compensation. I would add to this that in each case where an officer claims that the case falls within these words of Lord Peel, the case should be stated to the Public Service Commission and its opinion ought to be taken, whether the case really comes within those words or is merely a case of ordinary abolition." Would you accept those principles in judging of the compensation?—Yes, generally speaking I would accept the position that I think the witness accepted, set out by Lord Peel. As to consulting the Public Service Commission, I should expect that recourse would be had to the Public Service Commission, but it would have to be recourse at the discretion of the Secretary of State. I can quite contemplate the Public Service Commission being consulted in cases of that kind.

11,614. You would not exclude all reference to the Public Service Commission?—No, I should not at all, but I should leave it to the discretion of the Governor-General and the Secretary of State to take a case of that kind to the Public Services Commission if they wished to.

11,615. Then about paragraph 183, I think it is supposed to be a reproduction, as you mention in the list, of section 96 (b) (2) of the present Government of India Act?—(Sir *Malcolm Hailey.*) Yes.

11,616. Then what I want to know from the Secretary of State is this: In this assurance which you give in paragraph 183, in the last three lines, you will notice that you are there speaking of those officers who are appointed after the commencement of the Act; you have spoken of those who were appointed before the commencement in paragraph 182; in paragraph 183 you are speaking of public servants who have been appointed after the commencement of the Act?—(Sir *Samuel Hoare.*) Yes.

11,617. Then you give an assurance at the bottom of that paragraph: "It is intended that these rules"—which you take power to make in that section—"shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the

Act." There is no such assurance given in the Government of India Act at present operative with reference to those who were appointed after the date of that Act?—That is so.

11,618. May I just have a reference to that in the present Government of India Act? Those who would be appointed after the passing of that Act will get the same conditions of service as those who were appointed before the Act?—Mr. Jayaker is quite correct; that is so.

11,619. There is no such assurance?—That is so.

11,620. Therefore in this manner it goes beyond the protection given by the Government of India Act of 1919?—Yes; it goes beyond the Government of India Act for this reason: we felt that the changes now contemplated were much greater than the change contemplated in 1919; therefore, if we were to get good recruits in the next five years we must make the assurance as strong as we could.

11,621. I just want you to tell us, because it is not quite clear to me, the joint operation of paragraphs 182, 183, 184 and 188. Combined together, they mean this, that the benefit of Appendix 7, Part I, practically will be claimable by public servants whom you appointed before or after the Act or whom the Crown appoints after the Act or who may be holding a listed post. All these public servants would get those rights which are mentioned in Appendix 7, Part I, under the operation of these three sections. Am I right?—That is broadly true, yes.

11,622. That means practically every servant, whether he is appointed by the Secretary of State before the Act or after the Act or whether he is appointed by the Crown before or after the Act, or whether he is in fact holding a listed post. All these servants will get the benefit of Appendix 7, Part I, under the operation of these three paragraphs?—Yes.

11,623. Do you not think it is a very wide extension of those special rights which are mentioned in Appendix 7, Part I?—Again, it is just this issue: whether you give the new entrants in this period, whatever it may be, the same rights as existing officials or not. We think it is wiser to give them the same rights.

11,624. You think it is wiser to give them the same exceptional privileges as to those appointed by the Crown or by anybody appointed under the Secretary of State's list?—That is continuing the present arrangement.

11,625. Remembering that most of the rights in Appendix 7 are only by departmental rules, they are not all in the Government of India Act, you are now dignifying them into constitutional rights. Do you not think it is right to reserve them only to those services for whom they were originally intended?—We have felt that with this very great experiment it was wiser for a period to keep things as they are. I do attach such immense importance to recruitment continuing satisfactory in the years immediately following the commencement of the Act.

11,626. I take it that you will reconsider this question when the Statutory Inquiry after five years takes place?—Yes.

11,627. Then paragraph 187: There is one question which is troubling me on that: "The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council", and so on. I take it that the power of delegation which the Secretary of State enjoys under Section 96 (2) of the present Government of India Act is kept intact in spite of the wording of paragraph 187?—May I just look into that for you?

11,628. Yes?—I think I have got the answer, but I would like to be quite accurate.

11,629. If you please. Then one more question on that: there is no provision in the present proposals analogous to Sections 99 and 100 of the present Government of India Act, power to appoint certain other persons with reserved offices and power to make original appointments in certain cases. There is no substantive provision like Sections 99 and 100 although you refer to certain rights in the matter in Appendix 7. Would you like to reserve your answer to that question, too?—I am informed that powers of that kind are comprised in paragraphs 185 and 188.



11,630. Paragraph 185 is : "The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post"—I am not speaking of that, Sir Samuel; I am speaking of the power which section 99 gives to the authorities in India to appoint any person of approved merit and ability to any of the superior posts; and section 100 does the same thing. There is no section, so far as I am aware, in the present proposals corresponding to those two?—We intend that that power should continue and we believe it is covered by one or other of those clauses. We will see when it comes to more accurate drafting that that power shall be continued.

11,631. And if it is not clear enough, you will have power such as that given by sections 99 and 100; you will make specific provision for that power?—That is our intention.

11,632. Thank you. Then, going to Schedule VII, page 120, you remember the opinion expressed by Sir Tiruvalangudi Vijayaraghavacharya (I do not want to go into details and take up your time) with regard to many of these rights, that they will have to be reconsidered if provincial autonomy and the Federal Ministers' responsibility is to be rendered complete. You remember the answer that he gave?—Yes, I remember.

11,633. May I refer you in this connection (I am not going to read them) to questions 11,052, 11,055, and 11,058, at pages 1297 to 1299. He definitely expressed the opinion of his Association in question 11,055 that this list of rights requires to be very carefully modified if provincial autonomy is to be made a success. Then, later on, in question 11,058, he said: "In the case of such people who are recruited at the centre and posted into the provinces, he would not slacken the provincial control over them, subject to the appeal to the Governor-General." In the light of this opinion expressed by the responsible representative of the

Indian Officers, would you reconsider this list in the light of these comments? I am not asking an answer just at present?—As far as I remember the evidence to which Mr. Jayaker has referred, it left a rather obscure impression upon my mind that at any rate one or two of the gentlemen who came to give evidence were not quite clear as to what existing rights they wished to safeguard. Be that as it may, it is our considered view that if we are going to maintain service rights, as it is our intention to maintain them, we must take service rights as a whole; and that is the reason why we have put all the service rights in and we have not tried to pick and choose between them.

11,634. But take, for instance, the posting of an officer; do you think that will not interfere with the working of provincial autonomy?—I think all those things, if they are worked foolishly, will interfere very much with the machine of government, but I do not believe in actual practice they will. It would be our intention, if provincial autonomy is started, to make provincial autonomy effective. Anyhow, speaking for myself, so far as I am concerned, I should discountenance any action, on one side or the other, so to make a pedantic use of rights as to make government impossible.

11,635. You think that by appropriate devolution rules you could remove the difficulty?—I should not like to say how, but I am assuming there is common sense on both sides.

11,636. But it sometimes goes beyond common sense. For instance, you say that no public servant in that particular cadre can be posted except with the consent of the Governor-General or the Governor, as the case may be. Do you not think that that will seriously interfere with the freedom of the Minister?—I would have thought that it would not at all. If you take now the head of a great Department here, no doubt he takes an interest in the postings in his Department, but I should think the cases in Whitehall are very rare when a Minister has not accepted the advice that is given him, and in actual practice a Minister in a great Department here has little or no say in the postings of his Department at all.

11,637. Take, for instance, right No. 16: "Right of complaint to the Governor against any order of an official superior in a Governor's Province"?—We mean by that phrase anything affecting the official's personal rights. We do not in the least mean that an official could go to the Governor and complain about a line of policy. We do mean that he should have the right of access to the Governor where his personal rights are affected.

Dr. B. R. Ambedkar.

11,638. You mean a matter in which he is wrong?—Yes.

11,639. That is exactly the language used in the Government of India Act?—Yes.

Sir Hari Singh Gour.

11,640. Sir Tiruvalangudi Vijayaraghavacharya in his evidence said that that always was intended to be limited to personal rights?—Yes.

Mr. M. R. Jayakar.

11,641. Then it will have to be made clear that it does not refer to administrative orders?—Certainly.

11,642. Then paragraph 196—Public Service Commissions—just one or two small questions upon that. "The members of the Federal Public Service Commission will be appointed by the Secretary of State." Do you see much difficulty in accepting the recommendation of the Services Committee that the time has come when you should substitute for the Secretary of State the Governor-General at his discretion—not the Governor-General on the advice of his Ministers?—I have never thought that an issue of that kind was an issue of principle.

11,643. I am only mentioning it because that was the recommendation of the Services Committee?—Yes. The fear I have had about changing the name (that is what it may amount to) is that it should be open to misunderstanding on both sides; that in India it should give one impression, namely, that the control is in future Indian; and that here it should give the impression that it really makes no difference whether you call the appointing authority the

Secretary of State or the Governor-General.

11,644. What I am pointing out is that it does not make any difference in substance because the Governor-General at his discretion under one of your proposals is always under the Secretary of State?—Yes, and it is just because of that that I gave the previous answer. I have been nervous of a change of name creating the kind of misunderstandings I have just alluded to.

Mr. Zafrulla Khan.] Which particular recommendation of the Services Committee are you referring to, Mr. Jayakar?

Mr. M. R. Jayakar.] Page 66 of the Report of the First Round Table Conference.

Mr. Zafrulla Khan.] It was the Government of India then.

Witness.] My own view would be that in all appointments of this kind upon which obviously the Secretary of State would have no detailed knowledge it would in actual practice be the Governor-General who would make the recommendations.

Mr. M. R. Jayakar.] The answer to Mr. Zafrulla Khan is that I am referring to paragraph 5 at page 67 of the Services Committee's Report: "In every Province and in connection with the Central Government a statutory Public Service Commission shall be appointed by the Governor or Governor-General, as the case may be."

Mr. Zafrulla Khan.] I am much obliged.

Mr. M. R. Jayakar.

11,645. Then with regard to the Provident Pension Funds to which you refer in the Introduction, page 36, paragraph 73, you are there referring to certain proposals which have not yet matured for consideration, according to this paragraph. When they are ready, then you say you will consult members of the Services before any decision is reached. Would you likewise consult the Indian Legislature upon this important point just as you consult the Services? If you decide upon taking some action of very far-reaching character you have promised to consult the Services in that

way. Would you consult the opinion of the Indian Legislature on that point?—I had not contemplated consulting the Indian Legislature for these reasons: First of all, it is a question that does not concern legislation at all; secondly, it is a question that only indirectly concerns public money. The families pension fund is exclusively a fund of subscriptions. That being so, I have thought it was sufficient to consult the subscribers to the fund.

11,646. What I had in view was this. Supposing your decision takes this form, that it should be funded?—Yes.

11,647. And that it should be held in England: It may mean a serious depletion of the revenue at the resources of the Government of India?—No. I do not think Mr. Jayakar need be anxious upon that point. I think we have made it quite clear that if funding were to take place, funding would have to take place over a series of years. The effect upon the Indian budget would not be serious. I can assure him of that.

*Sir Phiroze Sethna.*

11,648. In Proposal 177 you suggest that the Secretary of State's advisers be appointed for a period of only five years and not be reappointed. At present I understand members of the Secretary of State's Council are so appointed. Is there any reason for the change proposed?—Yes, our reason is that we are proposing conditions which would make it essential for the Secretary of State's advisers to have more recent experience of Indian administration than they might have under the present rules, and if one made reappointment possible it would bring the time of their active service further away from the time of their appointment to the Council.

11,649. But such advisers are not to be only men drawn from the Services; there may be others as well, as you have at present?—I would have thought it was a bad plan to have one set of rules for one member of a small body of this kind and another for another. I do not attach very great importance one way or the other to the point, but I think it is important to try to keep the Indian experience as well up to date as possible.

11,650. By Proposal 179 I see the Secretary of State is bound by the

decision of the majority of his advisers as regards rules which have been drafted for conditions of service, etc.?—Yes.

11,651. Is that the rule at present?—That is the rule at present.

11,652. Mr. Jayakar asked you a question with regard to the last sentence in Proposal 183, according to which you propose to extend the same privileges to those who will enter the Service after the Constitution Act comes into force?—Yes.

11,653. May I take it there will be no distinction in regard to these rules between the Indian members and the British members of the Indian Civil Service?—Yes—no more distinction than there is at present. I put my answer in that form, because Sir Phiroze will remember that there is this distinction between overseas pay and non-overseas pay, but I think what is in his mind is whether there would be differentiation in other ways between the two. There would not be.

11,654. I will tell you what I had in my mind. I understand that Indian members of the Indian Civil Service, after the passing of the present Government of India Act, were also given the concession to apply for proportionate pension if they desired it, but that concession was withdrawn about 1923 in the case of Indian members of the Indian Civil Service. I should like to know if this concession is proposed to be restored?—We contemplate no differentiation of that kind under our proposals.

11,655. That is to say, both Indian and European members of the Indian Civil Service will be given this concession?—Yes. Sir Malcolm reminds me that there is a difference now, but I think I am right in saying there was no difference after the passing of the 1919 Act. For the first period after the passing of the Act there was no difference.

11,656. For Indians the concession was withdrawn in 1923. I want to know if the Indian members of the Indian Civil Service are to be given this concession again?—Here again I would like the advice of the Indian Delegates. I would have thought that it was a mistake to make a distinction between the two classes.

11,657. My personal view is that there is no necessity now for continuing to offer this concession when the new entrants will enter the Service with their eyes open?—But we do not propose to make the concession to new entrants.

11,658. I am glad to know that. You mean neither to Indians nor to Europeans?—No: the concession is only for existing officials, British and Indian.

[*Sir Phiroze Sethna.*] For Indians the concession has, as I say, been discontinued since 1923, but do I understand you to say that in the case of new entrants, Indians or Europeans, this concession, namely, that they could retire on proportionate pension, will be discontinued?

[*Marquess of Reading.*] Do you mean new entrants since 1923?

[*Sir Phiroze Sethna.*] No—new entrants after the Constitution Act comes into force.

[*Mr. Zafrulla Khan.*] After the passing of the Act?

*Sir Phiroze Sethna.*

11,659. Yes.—I am reminded that we do give this right to the new entrants for the new five years.

11,660. Europeans and Indians?—I am informed it is Europeans.

11,661. Only Europeans?—Yes.

11,662. Then there is a distinction?—Yes, there is a distinction.

11,663. And you propose to continue it?—It is continuing the present rules. The basis of these proposals is to take over existing rules.

11,664. I am in favour of your withdrawing this concession from Indians; I am entirely in favour of what has been done since 1923; but I see no reason for continuing this concession to new European entrants after the passing of the Act. Will you consider that?—Yes.

*Mr. Zafrulla Khan.*

11,665. Will the Secretary of State consider whether there is any necessity to continue the concession after the passing of the next Act? After the passing of the next Act everybody will

know what is the proposed Constitution, and why should the concession regarding proportionate pensions be given to entrants who enter the Service after the passing of the next Act?—My reason was a purely practical reason, and there was no other reason in my mind, that I was nervous in these five years of recruitment going badly, and on that account I was anxious to give the new entrant every legitimate assurance that we could that he would have a career, and that he would have, generally speaking, the rights that existing officials have.

11,666. To that I am not objecting. By all means give him the assurance that the rights under which he enters will throughout the course of his service be guaranteed to him, but the concession that was given to certain officers on the passing of the last Act was on account of the fact that they did not know under what conditions they were then going to serve, and that they must be given the choice, and, if they did not like the conditions, they could go away. Why should that be continued after the passing of this next Act when everybody in the country will know the conditions under which they will be serving after the passing of the Act?—Will they know the conditions under which they will be serving? The Act will be there no doubt, but it is very difficult to predict with great changes of this kind what is going to happen, and I can well conceive a young man, and, perhaps more important, the parents of a young man, asking themselves the question: "What are going to be the conditions, not in the next year or two, but over a longer period," and there is no doubt about it at all, that this is a right that is greatly valued, and I believe myself that the fact that a right of this kind exists keeps people in the Service rather than drives them out of the Service. I think they feel that they have got this right in case things go really wrong, and that has a steadying effect on them in their service.

*Sir Phiroze Sethna.*

11,667. On the contrary, that right might be resorted to in the manner Lord Lytton referred to?—What would

Sir Malcolm say about that, and the effect on service conditions, (Sir *Malcolm Hailey*.) I think on the whole it undoubtedly has a steady effect on men. I often discuss with men the chances that they have under the new Constitution. I ask them whether they think that when the new Constitution is introduced they will have to leave India, and they say: "No, we intend to go on and see how it works, and we will go on as long as possible because we know that, if we find conditions as we consider them impossible, we still have the right of retiring on proportionate pension," and the result is that they go on up to the end of their ordinary services. I think there was, as Lord Lytton said, a certain number of men who originally retired, not really, through being discontented at the changes in the Constitution, but for other reasons, but they have all gone. I do not think that men coming into the Service now are likely to retire in the same way. On the whole I should think that this liberty of retiring on proportionate pension will get you better recruits than if you withdrew the rule, and it is more likely to keep the people contented in the Service. That is the general feeling I have about it.

11,668. Will not this arrangement cost the country more?—(Sir *Samuel Hoare*.) I would have thought not. I would have thought what would cost the country far more is bad recruitment and constant changes.

*Dr. B. R. Ambedkar.*

11,669. Might I make a suggestion for consideration on this matter? Instead of giving the right outright to the new entrant would it not be better for the Secretary of State to retain a discretion in his own hands which he may exercise in a genuine case where a man wants to retire because he has really been suffering under the new conditions, and does not really want to take advantage of this rule?—We can consider a suggestion of that kind. I assume Dr. Ambedkar's suggestion refers to the new entrants?

11,670. Yes, I am talking of the new entrants. In that case the Secretary of State may retain in his own hands a certain amount of discretion which he

may exercise in favour of a man who has genuinely proved to the Secretary of State and his advisers that the reason of his retirement is discontent and dissatisfaction with the new conditions?—I should like to consider a suggestion of that kind. The doubt that is in my mind is whether the mere fact that there is this discretion will take away the assurance from the mind of the parent, or the university, or the school from which the young man is coming, but I will consider it.

*Sir Phiroze Sethna.*

11,671. You will consider it?—Yes.

11,672. To turn to the Public Service Commission, may I ask if the suggestion thrown out by Lord Eustace Percy this morning, of having only one Public Service Commission throughout the country, was considered by the authors of the White Paper?—Yes, I think we have certainly considered it, but we do not see at present how it would fit in with the various Provincial Governments.

11,673. Do not you think that such a Public Service Commission would be greatly looked up to, highly respected, and that it would be easier for Government to find a smaller number of very capable men to discharge these duties than would be the case if we had more Public Service Commissions throughout the country, and, further, will not it effect a saving in expenditure because, even if the Provincial Governments are asked to contribute towards a Central Public Service Commission, they would be contributing far less than what they would have to pay if they had their own Public Service Commission. At any rate, will you consider this?—Yes, I think there is a good deal in what Sir Phiroze says. On the other hand, I think there is a good deal in the arguments in favour of Provincial Commissions. I would have thought from the correspondence I have had on the subject that a good many of the Provinces were very intent upon having their own Commissions, and if there is a strong provincial feeling on the subject I would have thought that in the provinces they would pay more attention to their own Commission rather than to a Central Commission, the starting of which they may rather resent.

Sir *Abdur Rahim.*

11,674. May I make one suggestion in this connection: supposing discretion was given to the Provincial Government to utilise the Central Public Service Commission, perhaps some of the Provincial Governments might take advantage of that?—That is actually I am informed what happens now with the Central Provinces. They utilise the Central Public Service Commission. I think we might certainly consider the possibility of giving that power to a Provincial Government. I am nervous, though, of overriding provincial feeling upon a subject of this kind, and with the result that the prejudices of the province will be against the body that is doing these duties. That is what makes me nervous.

11,675. If you only give them discretion that might meet the case?—I quite agree.

Sir *Phiroze Sethna.*

11,676. I take it, Sir Samuel, it is contemplated that the services of the Public Service Commission might be availed of by other bodies than Government servants, such as railways, reserve banks, etc.?—Yes. I have certainly contemplated that so far as administration goes that would be the case.

11,677. Now to turn once again to the subject of accruing rights, you told us this morning, Secretary of State, that you will bear in mind the suggestion made by Sir John Kerr that supposing in a Province five Commissionership were abolished only the five senior men who might have been called upon to fill the position of Commissionerships might be given compensation, and you also added that you will bear in mind the views of your predecessor, Lord Peel. What I want to know is, will this compensation be paid for all time or is there going to be a limit in point of time, or whether such compensation, if any is given, will only be given to those who have joined the Service before the new Act comes into force and will not apply to those who join after the Act comes into force?—We have contemplated that it would be available for existing officials and for such officials as are appointed in this

period, whatever it may be, a number of years.

11,678. Five years?—Yes.

11,679. Now there is one more subject, and that is about pensions. Under paragraph 186 the White Paper says: "The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Indian taxation if the pensioner is residing permanently outside India", and the same privilege is proposed to be extended to new entrants. May I take it, Secretary of State, that this exemption from Indian income tax was offered in order to afford relief to the pensioner?—I think it was always assumed as part of the obligation.

11,680. It was done in order to benefit him as compared with one who is not a pensioner?—No, I think it was a part of the pension arrangement.

11,681. What I want to point out is that this exemption affords no relief to the pensioner himself whereas it adversely affects Indian finances—Indian revenue. Under the Indian Income Tax Act all income from whatever source derived, accruing, arising or received in British India, is subject to Indian income tax. Thus, if a Britisher who is not a Government servant entitled to pension resides in Great Britain and suppose he earns dividends on his shares in Indian Companies, he is liable to Indian Income Tax on such dividends, but because he brings that income to this country he has to pay on it British Income Tax as well. This would amount to double Income Tax, but under the arrangements arrived at to give relief from that double taxation he pays only at the rate leviable in this country, and there is a further arrangement under which the tax so levied is apportioned between Great Britain and India according to certain principles so that Indian revenues might not suffer. Now may I ask you, Secretary of State, if the same principle cannot be applied to pensions? The pensioner will only be taxed at the British rate. He will not pay anything in addition as Indian Income Tax, but the British Exchequer from what sum it collects from pensions should pay to India the amount of the tax the Government of India would be entitled to on such pensions. Such an arrangement is neces-

sary in the interests of Indian revenues, because the present system of exemption from Income Tax does not benefit the pensioner to the extent of a single penny, whereas it involves a loss of several lakhs of rupees a year to the Indian revenues. The only pensioners who would suffer by the removal of such exemption would be those patriotic gentlemen who reside abroad, away from England, to avoid the British Income Tax?—I am afraid I would not admit the justice of Sir Phiroze's claim at all. This is distinctively an Indian obligation. I cannot see in the least why the British Treasury or the British taxpayer should take it over. It is an Indian obligation that must be met out of Indian revenues. Secondly, upon Sir Phiroze's own admission this arrangement would leave outside any pensioner who was not residing in the United Kingdom, including the Channel Islands, the Continent and the Dominions.

Sir Phiroze Sethna.] Try to rope them in.

Sir Abdur Rahim.] But the Indian Income Tax Act provides that from all pensions payable the tax is to be deducted at the source and then the pension is paid. That is the provision of the Indian Income Tax Act.

Sir Phiroze Sethna.

11,682. I do not press for an answer to-day, Secretary of State, but this is a point which has been taken up in the Indian Legislature more than once. The loss of revenue amounts to several lakhs of rupees, and I would request you to give it your serious consideration?—I can quite understand the Indian taxpayer being very anxious to push this obligation on to the shoulders of the British taxpayer, but I can equally understand the firm determination of the British taxpayer under no circumstances to have the obligation shifted on to his shoulders.

Mr. Zafrulla Khan.

11,683. The obligation is to pay the pension. Is the obligation also to pay it tax-free?—Yes.

11,684. Supposing there is a British subject residing in India drawing his pension from Japan, is the British Government in India, in view of their obligation to pay that pension, not to deduct the tax?—These pensions, I think I am right in saying, have always been paid tax-free; that has been the habitual practice, and I would see grave objections to changing the arrangement.

Dr. B. R. Ambedkar.] What would be the position of a Civil Servant pensioner if he were residing in England? Would he not pay Income Tax on his pension if he drew it in India?

Sir Abdur Rahim.] It is deducted at the source.

Dr. B. R. Ambedkar.] Therefore to say the obligation is to pay the pension tax-free is not a correct statement.

Sir Phiroze Sethna.

11,685. No, it says, "will therefore also be exempt from Indian taxation if the pensioner is residing permanently outside India." He pays it in India?—It is a continuation of the existing prescriptive right.

11,686. True, but it is positively unfair in this case for this reason, that whilst a man who is not a pensioner and who derives his income from dividends on his shares in Indian Companies brings that money here, the British Exchequer pays the proportion of his Income Tax relating to that income from Indian shares to India; similarly the British Exchequer might pay the Income Tax upon the amount of the pension to India?—I cannot imagine that the British Exchequer would accept that point of view or would undertake an entirely new liability.

Sir Phiroze Sethna.] But they have accepted that liability in the case of other incomes—other than pensions.

Chairman.] I propose to adjourn now until to-morrow evening at 5 o'clock, when we sit until 7.15.

(The Witnesses are directed to withdraw.)

Ordered : That the Committee be adjourned to to-morrow at 5 o'clock.

4th October 1933.

Present :

Lord Archbishop of Canterbury.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Linlithgow.  
 Marquess of Reading.  
 Lord Middleton.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.  
 Mr. Butler.  
 Sir Austen Chamberlain.

Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Issac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.  
 Earl Winterton.

The following Indian Delegates were also present :—

## INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
 Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. N. R. Jayaker.

Mr. N. M. Joshi.  
 Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] Lord Reading, I understand that you have a question you desire to put to the Secretary of State ?

Marquess of Reading.

11,687. There is one question I desire to put to the Secretary of State on an answer given yesterday ; it is with reference to a question from Colonel Gidney. Colonel Gidney's question, as I understand it, concerned the protection of the pensions of services other than the All-India services and the responsibility for security. The phrase used, I think, was, "more obligation". I thought at the time that the answer might convey some further implication than was intended ; I did not know ; but what I am anxious to ascertain from the Secretary of State

is whether or not there is any limitation upon that, because, from the answers given earlier in the day to Sir Austen Chamberlain, I am almost certain it would be rather difficult to reconcile the two statements. I do not know whether the Secretary of State can help us upon it ?—(Sir Samuel Hoare.) In replying Sir Henry Gidney, I intended to make it clear that what I said earlier in the day in answer to Sir Austen Chamberlain in regard to the security of pensions was not limited to the pensions of the All-India Services, but applied in principle to the pensions of persons not controlled by the Secretary of State. I explained that His Majesty's Government had announced that they had no intention of allowing a state of things to arise in



India in which a repudiation of debt could become a practical possibility, and, further, that it is inconceivable to them that, in dealing with any scheme of constitutional change in India, Parliament could fail to provide such safeguards as may be necessary to ensure the due payment of pensions to officers who have served the country. These pledges obviously apply equally to the Services which Sir Henry Gidney has in mind as to those controlled by the Secretary of State, and the powers conferred by the White Paper are such as we believe will enable them to be implemented without any question arising of pensions, in case of default, being actually made by His Majesty's Government themselves. I take this opportunity however of correcting a possible misunderstanding on another point. I see it suggested in the Press this morning (and, incidentally, I would draw the attention of the Chairman and the Committee to yet another leakage of our proceedings) that I had stated that gazetted officers and subordinate services would be treated similarly to the superior services, the implication being that they would be so treated in all respects. A comparison of paragraphs 182 to 189 and 191 to 194 of the White Paper will show that this is not the case. I will explain the matter in greater detail in the note that I have promised to circulate.

*Sir Hari Singh Gour.*

11,688. My Lord Chairman, I understand the Secretary of State is, at the present moment, confining himself to the elucidation of points arising out of the White Paper without giving his own view on the various points after consideration of the evidence which has been given on this subject by responsible witnesses, including the representatives of the Indian Officers' Association?—I am giving evidence of both kinds. I am defending the proposals of the White Paper, but in my defence I am by no means ignoring the evidence that has been given to the Committee.

11,689. May I in this connection draw the attention of the Secretary of State to a passage which occurs in the Simon Report, volume II, page 289, paragraph 330, to the following effect, "None of

the provincial Governments recommends the continuance of All-India recruitment for the irrigation branch of the Indian Service of Engineers or for the Indian Forest Service". Do I take it that this view has found favour with the authors of the White Paper?—No. In the White Paper we propose a transfer of the Service. What I was doing yesterday in answer to certain questions, was emphasising what I think is accepted by all of us, namely, the great importance of the Irrigation Department and the difficulty in view of its extent, say, in a province like the Punjab, in applying to it special treatment.

11,690. But the view of the Simon Commission was that these services should be provincialised according to the view of the provincial Governments; that all the provincial Governments were for the provincialisation of those services. In the passage which I have referred to, the view of the provincial Government was that the All-India recruitment for these services should not continue?—That is the proposal of the White Paper.

11,691. So I wish to point out that the proposal of the White Paper accords with the views of the provincial Governments referred to in the Simon Report?—With the views of the provincial Governments referred to in the Simon Report, that is so.

11,692. It has been said in a question or two that if the provincialisation of the services took place, there might be an elimination of the European element and in consequence a deterioration of efficiency. I wish to point out that this proposal of the White Paper is in accordance with the view of all the provincial Governments who were consulted by the Simon Commission?—That is so. It is however fair to say—and allusion was made to this fact yesterday—that in the Punjab there is a difference of opinion.

11,693. That difference of opinion might have arisen since the provincial Governments had written to the Simon Commission at the time?—Yes. I have had my attention called to the passages in the report of the Simon Commission; I think they amount to this, that the Governments took the view that Sir Hari Singh Gour has just stated. The ex-

perts, on the other hand, took the other view.

Sir Hari Singh Gour.] That is so.

Marquess of Reading.

11,694. Is it right that the Commission itself took the other view, too?—No, the Commission itself accepted the views of the provincial Governments, but in evidence there was contrary evidence given by experts.

11,695. I may be wrong, about it, I am only just looking, but I see almost in the sentence that follows from what Sir Hari Singh Gour read, "some of the heads of these Departments take another view"—that is the experts.

11,696. Then follows this sentence: "We ourselves see strong advantages in the preservation of All-India recruitment, particularly for the Irrigation Service"?—Yes. Let us just carry it on to the end, Lord Reading.

11,697. Yes, I have not read it all; I only noticed that?—I thought in the recommendations at the end the provincial recruitment was accepted.

11,698. I have read through hastily all that paragraph; it does not qualify that?—In any case, if the service is to be a provincial service, I think that the Committee should realise the difficulties that there may be in All-India recruitment. Lord Reading, I have got now a further passage here in which it is correct to say that the actual conditions of recruitment were left open. The transfer was accepted, but the conditions of recruitment were left open. On page 314, paragraph 367, it says: "It is a matter for consideration whether the Irrigation Service and the Forest Service should not be similarly recruited"—that is to say, upon an All-India basis.

Marquess of Reading.] I only made the correction because the passage that Sir Hari Singh Gour read, confined as it was to Governments, nevertheless did not bring in the fact that the Commission had not accepted that.

Sir Hari Singh Gour.] I was dealing with the views of the provincial Governments as conveyed to the Statutory Commission.

Marquess of Reading.] Quite right.

Sir Hari Singh Gour.

11,699. May I also draw the attention of the Secretary of State to a passage in the Lee Commission Report, paragraph 14, page 8, where they point out that the continuance of an All-India Service amenable to an outside authority is a constitutional anomaly? May I quote the exact words? "In the transferred field the responsibility for administration rests on Ministers dependent on the confidence of provincial legislatures. It has been represented to us that although Ministers have been given full power to prescribe policy, they might be hampered in carrying it out by the limitations to their control over the All-India Services inasmuch as members of these services, unlike those of provincial services, are appointed by the Secretary of State and cannot be dismissed except by him, whilst their salaries are not subject to the control of the local legislatures. Ministers themselves have told us that the All-India officers serving under them have with negligible exceptions given most loyal support in carrying out their policies, but the constitutional anomaly remains that the control over the transferred field contemplated by the framers of the Government of India Act has remained incomplete." The White Paper proposal therefore continues this constitutional anomaly for at least the next five years after the commencement of the new Constitution Act. Is not that so?—Yes.

11,700. Now if we examine the question in a closer light, is it not a fact that the recruitment for the next five years after the commencement of the Act would be of members of the Indian Civil Service or of the Police Service, who would, during these years, carry on the duties which are carried on in India by members of the Provincial Civil Service. Sir Malcolm Hailey, with his experience of the administration of India, will perhaps bear me out when I say that during the first few years the members of the Police and India Civil Services carry on exactly the same duties as the Deputy Collectors and Magistrates, and Deputy Magistrates and Deputy Superintendents of Police. Is it or is it not so?—(Sir Malcolm Hailey.) Yes, during the first few years they do.

11,701. Therefore the result of the continuance of recruitment after the commencement of the Constitution Act would be that you will have an accumulation of a number of young men who, during those five years would be carrying on the duties which are ordinarily carried on by the members of the Indian Provincial Services. Now, that being the case, what data can be furnished at the end of five years to judge of the appropriateness of continuing the All-India recruitment when the main test of the necessity of having All-India Services would be wanting in view of what I have just now pointed out?—(Sir Samuel Hoare.) I should not agree that the main test would be wanting. I think there are a number of tests, and I do not know which I should say was the main test. What I should have thought was most important to retain was a breathing space in which things could settle down. After all, however well the constitution goes, the first few years are going to be very difficult years. Further, we all, I suppose, admit the necessity of getting good men, British and Indian, into the various Services. I can imagine no greater calamity than that, if in the first difficult years such changes were made as to endanger recruitment to the Services. On that account the whole basis of these proposals is that there should be a breathing space in which we should gather together as far as we can the experiences of the period, but still more in which we could avoid any kind of grave anxiety taking place in the minds of the families, British and Indian, from whom recruits are drawn, with the result that the recruitment to these Services, British and Indian, might be compromised for many years to come, and indeed for ever.

11,702. In view of the last sentence of the Secretary of State's statement, may I beg to point out to him that, even assuming all that he has said, the conclusion is a *non sequitur* because there is a very large body of opinion in India voiced by the representatives of the Indian Officers' Association which comprises a fairly large number of Indian members of the Indian Civil Service, namely 26, as stated at page 1299, who might under the new Constitution prefer, as the representatives say they would prefer,

that their recruitment and conditions of service should be under the Governor-General. If the Secretary of State would put the new recruits upon election, and ask them whether they would like to be under the control of the Secretary of State or the Government of India then the apprehension he has in his mind would be, to a large measure, if not entirely, dispelled?—Sir Hari Singh Gour is really raising a whole number of different issues now. Indeed, in his last sentence, he raised two issues as if they were the same. They are very different issues. He spoke at the beginning of his sentence of recruitment under the Governor-General, and he spoke at the end of his sentence of recruitment under the Government of India. The two things are very different.

11,703. I admit that.—What exactly is in his mind?

11,704. I would modify the statement that is made in the evidence and say we will assume the recruitment under the Governor-General?—Yes. Now there is an issue that the Committee should legitimately consider. Let me state it?

11,705. Yes?—It is said that Indian sentiment would be better reconciled to the recruitment of the All-India Services if the Governor-General were the recruiting agent, and not the Secretary of State; the Governor-General, that is to say, at his discretion. Indian sentiment I would admit would favour an alternative of that kind. On the other hand, the case has been put to me that a change of that kind, whether it meant much or whether it meant little, would rightly or wrongly disturb the sources from which we draw recruitment in this country. I am not quite clear myself what it is exactly that Sir Hari Singh Gour, and those who hold this view, really contemplate. Do they contemplate that this changed method of recruitment should be little more than a change in name, or do they contemplate that it should be a change in substance, and if it is to be a change in substance, what exactly is it that they have in their mind? I ask this question not to make a debating point, but for this reason. I have always been very nervous myself of making a proposal of this kind that

might appear to mean much to India, and might appear to mean little here, and I think that of all things that we wish to avoid it is misunderstandings of this kind, and I would like to know, if I may, from Sir Hari Singh Gour what exactly would be the change that he has in mind if the Viceroy became the recruiting agent instead of the Secretary of State.

11,706. May I draw the attention of the Secretary of State to a question put to Sir T. Vijayaraghavacharya, 11,086, Volume II C, page 1299: "Now as regards the future recruits to the Indian Civil Service (I will deal with the other members later on) the view of your Association is that their control should vest in the Governor-General, acting under the advice of the Public Services Commission?—(A.) It is so." The Indian sentiment favours the view that if there is to be a real responsibility in the Government of India, and in the Provinces, the Services should be under the control of the Governor-General and the Provincial Governments?—But let us be clear about this, Sir Hari Singh Gour. You said just now the Governor-General at his discretion.

11,707. Yes?—What do you mean by the Governor-General and the Provincial Governments?

11,708. This is the logical conclusion I was dealing with. I am now coming to the practical side?—Yes.

11,709. But I realise the difficulty of being wholly logical in matters of this kind, and I suggest that Indian sentiment might be satisfied if the recruitment and control of the All-India Services during the transitory period of say five years is left to the Governor-General acting under the advice of the Public Service Commission as is recommended by the Indian Officers' Association?—Here again you see, Sir Hari Singh Gour I am not really splitting hairs over these phrases, but I want to be quite clear. You bring in now "acting under the advice of the Public Service Commission. No doubt the Governor-General would consult the Public Service Commission. You do not mean more than that because you said just now he would be acting at his discretion.

11,710. Yes?—The sort of difficulty that arises is this: Supposing the Governor-General becomes the recruiting agent he becomes the recruiting agent for the strength of the Indian Civil Service over the whole of India.

11,711. Yes?—That is to say, it would be he who would decide the cadres for the Provinces. Now there I should like to hear the views of other Indian Delegates. I am inclined to think that the Provinces would resent that kind of interference.

11,712. But they would resent much more the kind of interference which the White Paper proposes where the recruitment is left entirely to the Secretary of State who determines the number of posts to be filled and the offices that the incumbents will hold, and control even the transfer from place to place of those officers. That, I submit, is a much more detailed control by the Secretary of State than what is proposed by me?—Constitutionally I suppose there is no difference. The Governor-General does not act independently of Parliament. Constitutionally the channel is Parliament, the Secretary of State, the Viceroy, and constitutionally there is no difference, is there?

11,713. When the appointment is made by the Governor-General at his discretion he has a much larger measure of discretion than he has as an agent of the Secretary of State and of His Majesty's Government. In the one case he acts not on his own responsibility but as the instrument of His Majesty's Government. In the other case he has his own discretion and that discretion might be overruled by the Secretary of State, but it is, nevertheless, a real discretion which he exercises and upon materials which he collects for himself.

*Sir Austen Chamberlain.*

11,714. May we be clear about this, Secretary of State, because the phrase, "Governor-General acting at his discretion" occurs in regard to many matters in the White Paper and is of great consequence. Am I right in understanding that the "Governor-General at his discretion" means the Governor-General free from any control by his Government or the Indian Legislature?—Yes.

11,715. But subject to all the control which the Secretary of State constitutionally exercises over him?—That is bound to be the constitutional position. You see, Sir Hari, it really comes down to this, that it is an issue between these two alternatives: If the change means very little, is it worth making in view of the anxieties that it does stir up in certain people's minds? If it means a great deal I think still more would it stir up anxieties in the minds of the Indian Civil Service, and I feel still more would it stir up anxieties in the minds, possibly, of Parliament; but, as I say, this is a difficult issue and we have thought a great deal about it. Upon the whole, we thought that for this comparatively short period it was better to make no change at all to go on exactly as we are.

*Mr. M. R. Jayaker.*

11,716. May I ask the Secretary of State's attention in this connection to paragraph 21, Clause 1 of the Governor-General's Instrument of Instructions?—Yes.

11,717. I want to know whether, as Sir Hari Singh Gour suggested, the Governor-General in recruiting and controlling would be acting at his discretion. I suppose that clause would apply to the Governor-General's actions. Paragraph 21, the first clause, says: "The matters arising in your Departments which you direct and control on your responsibility or in matters the determination of which is by law committed to your discretion"—that is the technical expression?—Yes.

11,718. Then you go on to say: "It is our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good Government of the Federation,"—this is the important thing—"subject, however, to such directions as you may from time to time receive from one of our Principal Secretaries of State"?—Yes.

11,719. So he would be guided by the Secretary of State under this clause?—Yes.

11,720. So practically there would not be much distinction between the Secretary of State controlling and recruiting

on his own authority and the Governor-General doing so at his own discretion. In both cases the supreme authority would be the Secretary of State?—In both cases the supreme authority is the Secretary of State. That does not, of course, exclude the possibility of different arrangements being made, but those arrangements would be bound to be subject to Parliamentary approval.

11,721. But what I was suggesting was that, even if the Governor-General at his discretion was given this power, practically under this clause the Secretary of State would be empowered to give such directions as he liked to the Governor-General?—Yes, constitutionally.

11,722. Therefore, the proposal, while it meets the Indian wishes, does not slacken in any way the ultimate control of the Secretary of State?—That is just the kind of position that Mr. Jayaker has correctly explained that I wish to avoid. I wish to avoid a misunderstanding, namely, that we appeared to be doing something that we were not really doing.

*Sir Abdur Rahim.*

11,723. There is the further consideration, is there not, that the Secretary of State would not be acting in a matter like this without consulting the Governor-General, so practically there will be no difference?—I think practically there will be little or no difference, unless, as I say, changes were made in the methods generally of recruitment. Changes might equally be made by the Secretary of State as by the Governor-General.

*Sir Hari Singh Gour.*

11,724. The other suggestion in this connection is stated in the Report of the Services Sub-Committee of the First Round Table Conference, page 65, where I find the following short statement: "Dr. Ambedkar, Mr. Zafrulla Khan, and Sardar Sampuran Singh are averse to further recruitment on an All-India basis for the Indian Civil Service and the Indian Police Service, save in respect of the European element in those Services"?—Yes.

*Sir Hari Singh Gour.*] The suggestion that is embodied in this recommendation seems to be that the Secretary of State

may continue to recruit the quota of European Members of the Indian Civil Service and the Police Service, but leave the Provinces and the Government of India to recruit the rest. Is not that what you meant, Zafrulla Khan ?

Mr. Zafrulla Khan.] Except for your addition of the words, " and the Government of India."

Sir Hari Singh Gour.] The Provinces. The Government of India would also require some servants.

Mr. Zafrulla Khan.] For their own services ; but we were only dealing with Provinces.

Sir Hari Singh Gour.

11,725. Yes. Is there any objection to carrying out this proposal ?—Again I still make my general answer which is really the basis of my proposals or the Government's proposals, namely, that in my view it is much wiser to make no changes at all in this comparatively short period.

11,726. That is an essentially conservative mind ?—That is it exactly.

11,727. What would be the number of fresh recruits during these five years after the commencement of the Constitution Act ?—I am told something in the nature of 200, European and Indian.

11,728. So the Europeans would be something like 100, I suppose ?—It is getting near half and half, is it not ?

11,729. Yes. What is the full strength of the cadre of the Indian Civil Service and the Indian Police Services ?—I am told about 1,200 and about 700.

11,730. Taking the Indian Civil Service, what percentage of the members of the Indian Civil Service perform purely judicial duties ?—I could not possibly give the percentage offhand ; I could have the figure looked up.

11,731. But supposing that there is a considerable percentage, may I ask the Secretary of State whether he is prepared to give effect to the recommendation of the Services Committee that the further recruitment to the judicial branch of the Indian Civil Service should cease ? I think the recommendation is contained on page 65, paragraph 2 : " We recommend that for the Indian Civil Service and Indian Police Services recruitment should be conti-

nued to be carried out on an All-India basis, but the majority of the Committee are of opinion that recruitment for judicial officers should no longer be made in the Indian Civil Service " ?—I was just looking up the proceedings at the Round Table Conference. It is true to say that there was a strong feeling expressed against further recruitment of this kind. Since then we have made a very full inquiry into the state of affairs province by province in India, and we have come to the view—and I will ask the attention of the Committee to and the advice of the Committee on this point—that it would be a mistake to stop recruitment of this kind. We feel that recruits of this kind do add a very valuable element to the judicial system in India, perhaps particularly in India where so many administrative questions are interlocked with each other and with judicial questions. Our view is, subject to the further views of the Committee and the Delegates, that the Indian Judicial System would lose rather than gain by the absence of men of this kind. They do not amount to a large number, and as the Committee remembers, the other elements in the judicial life of India are well represented in the Judicature, but upon the whole we feel that it would be a mistake to lose this element in the Indian Judicature.

Sir N. N. Sircar.

11,732. Will this be one of the questions that the Statutory Inquiry after five years will consider ?—Yes, certainly. Perhaps I may just add this further observation to what I have just said. No doubt, everybody in this room realises the fact that there is no racial discrimination at all. These civilian judges are Indians as well as British, and nothing that I said just now suggested any kind of racial discrimination between Indians and Europeans.

Sir Hari Singh Gour.

11,733. The Indian feeling is that professional judges should not be brought into competition with amateur judges, and the members of the Indian Civil Service are amateur judges ?—If the Committee would agree, I should like Sir Malcolm Hailey to give his views as a practical administrator upon a

point of that kind. (Sir *Malcolm Hailey*.) It is a matter, of course, that we have often discussed with Members of the High Courts, and I think I may say, without breaking any confidences, that Indian judges in the High Courts have themselves often expressed to me an opinion of the value of having Sessions Judges drawn from the Indian Civil Service. As for their being amateurs, the difference between the two is this, that whereas you take an Indian civilian and after five years put him through a judicial training, and then appoint him to the Judicial Service, in the case of men taken from the Bar, what we do at present is to take them into the Judicial Service after perhaps one or, at the outside, two years' practice at the Bar. That is the extent of the difference of judicial experience or legal experience between them. The value of the Indian Civil Service judge is that he has had a considerable experience of administrative and police work; he has also had what a very few members of the Bar have had when they come into the Judicial Service, a large experience of revenue work. His administrative experience becomes of particular value if and when he is appointed to a High Court judgeship, because the High Courts, as has been pointed out to the Joint Select Committee, have large administrative functions. Certainly, when all the local governments were consulted, they not unanimously, I admit, but by a strong majority, pressed on general grounds for the retention of the Indian Civil Service element in the judiciary, and although many opinions have been expressed by the High Court on the question whether judgeships should be reserved in the High Court by statute for civilians, and also on the question whether Indian civilians should be eligible to preside over those courts, yet the High Courts themselves, as a rule, have also been in favour of retaining Indian civilians in the judicial cadre.

Mr. *Zafrulla Khan*.

11,734. In order not to have to refer again to this matter, may I clear up one or two matters that arise from your statement, particularly that part which compares the legal experience of those recruited from the Bar and the ex-

perience of those who are drafted into the Judicial Service from the Indian Civil Service. You have said that those recruited from the Bar are recruited generally after one year—at the outside two year's practice. There, I would not differ much from you. In some Provinces it is sometimes three, four or five years. My question is this: Is it not a fact that those who are recruited from the Bar after two or three years' experience of practice are recruited as subordinate judges and not as district judges?—That is so, yes.

11,735. The members of the Civil Service who, after judicial training, are put into the judicial branch, are appointed as district judges?—That is so.

11,736. These Indian members of the Bar who are recruited as subordinate judges, after how many years' experience on the average do they become district judges?—After a considerable number of years.

11,737. From 15 to 20? Not always, but a considerable number of years—from 10 upwards.

11,738. Then it would be correct to say that as compared with the five years' experience on the administrative side of an Indian Civil Servant who becomes a district judge, they have 15 to 20 years' judicial experience as sub-judges and more than three years' experience as legal practitioners?—Yes; that experience as sub-judges is on the civil and not on the criminal side.

11,739. Then again, there is a small number of gentlemen who are recruited from the Bar direct as district judges in some Provinces, at least?—Yes; in some Provinces a very small number of appointments was made direct to the Sessions Judgeships from the Bar.

11,740. And those who are appointed direct as district judges from the Bar are not appointed with less than from 10 to 15 years' practice?—Yes.

Sir *Abdur Rahim*.

11,741. A statutory limitation of 10 years?—That was an experiment that was tried in some of the Provinces. I think the general feeling was that direct appointment from the Bar to Session judgeships did not allow you to

get men of the best class, that is to say, that if a man was really successful at the Bar, he would not come in as a Session judge but prefer to wait for his chance of a High Court judgeship afterwards.

Mr. *Zafrulla Khan*.] I was not contesting any of your statements; I merely wanted the material to be complete.

Sir *Reginald Craddock*.

11,742. Might I put another point, my Lord Chairman? It may be as Sir *Malcolm Hailey* said, that in the Punjab the civilian judge has no previous experience of the administration of civil justice; but in some Provinces the practice has been in force for a good many years of putting the man who has chosen the judicial service in for certain periods to do the work of a subordinate judge before he is afterwards promoted to be district Sessions Judge. I do not know whether it is done in the Punjab; I know it is in the other Provinces. On the other hand, I would like to stress one point on that subject, and that is that the magisterial experience of the Indian Civil Service judge, which may have been over many years, is of extreme value to him in regard to all the criminal cases that he has to deal with, so there is a great deal of compensation in the case of the civilian judge for perhaps not having studied the law quite as much as some of the members of the Bar?—I might add to my statement in view of what Sir *Reginald Craddock* has said that the civilian judge has always had a somewhat lengthy experience as a magistrate, and when the High Courts have discussed the merits of appointing civilians to the judiciary, they have always emphasised his value as a criminal judge.

Archbishop of *Canterbury*.

11,743. May I ask one question of the Secretary of State on this important matter? There was a good deal said during the evidence about the advisability, even if no change is made in regard to promotion of Indian Civil Service men to judicial office, that an exception might be made in the case of a Chief Justice. I understand it is the

practice now that an Indian Civil Service man who has been a High Court judge, has not been eligible for appointment as Chief Justice. I think you indicated in the evidence that you thought that, in spite of that, you would wish that present bar to be removed. On the other hand, others (I think Lord *Reading*) seemed to think that there might be great advantage in at least insisting that the Chief Justice should be a man who had throughout been trained as a lawyer?—(Sir *Samuel Hoare*.) I have always felt that these are very difficult questions and they are essentially questions for the Committee to discuss. My own view is, once again, that it is better to leave things as they are, I think, for this period.

11,744. But in this case, things as they are mean, as I gather, that an Indian Civil Service man is not appointed to a chief justiceship?—We have left that question very open for the Committee. It is really tied up with whether you should maintain or not the percentages in the appointment of judges. Our proposal at present in the White Paper is to remove all those restrictions. I think if you remove restrictions that might be argued to be to the advantage of the civilians, you ought equally to remove the other restrictions. But as I say, it is a question that I think is open to a difference of opinion, and I have never wished to dogmatise about it. My general view is that it is better to leave things as they are, leaving open the question as to whether or not we should remove these restrictions.

11,745. But my point is that you are making a change in the White Paper of things as they are. As things are, an Indian Civil Service man is not appointed to the post of Chief Justice. My reference is question 8000?—I think His Grace has made a perfectly valid point. It is an issue that is tied up with the question that we discussed in July, namely, whether there should be any restrictions or whether there should not.

Marquess of *Salisbury*.

11,746. But I understand that in practice you have never appointed as Chief Justice anybody except a lawyer?—That is so.



Lord *Irwin*.

11,747. There is no statutory bar at present to an Indian Civil Service man being appointed?—(Sir *Malcolm Hailey*.) The statute has been so interpreted.

Sir *Reginald Craddock*.] But he very frequently is appointed to act for some considerable time.

Marquess of *Reading*.] That is only an acting appointment.

Sir *Hari Singh Gour*.

11,748. Now coming back to the answer given by Sir *Malcolm Hailey*, may I ask him: Is it not a fact that while an Indian Civil Service officer when he is told off to do judicial duty is not necessarily a law graduate or has any legal qualification. Every member of the Bar who is appointed to a judicial office is invariably a law graduate, added to which he has had some forensic experience?—That is so, certainly, yes.

11,749. And if the considerations which Sir *Malcolm Hailey* had pointed out for the composition of the judicial service in India were sound, would it not follow that they would have been accepted by the British Cabinet and introduced into England and the other self-governing Colonies of the British Empire?—(Sir *Samuel Hoare*.) I should not like to make an answer about that at all; I think it is very much a matter of opinion.

11,750. Now I wish to refer to another question, that is with reference to the accruing rights. It is stated in the Lee Commission Report that there should be a legal covenant, a contract. I will draw the attention of the Secretary of State to page 49 of the report. The heading is: "The Safeguard of a Legal Covenant." The Commissioners say in paragraph 85: "As regards emoluments generally, we consider that, in all circumstances, the most practical form of safeguard would be a mutually binding legal covenant, enforceable in the Civil Courts, between the officer and the authority which has appointed him. We recommend therefore that such a contract should be entered into in the case of all future recruits, and, that to secure the position of existing officers a similar contract to be entered into, so framed as to cover the remaining liabilities con-

nected with their service and the privileges to which they may be entitled." Has the Secretary of State considered the advisability of adopting this procedure in preference to embodying them in the constitution Act?—Yes. Not only have we considered it, but I think successive Governments have considered it, and the more we have considered it the more impracticable we have found it. It is in actual practice quite impossible to put into the form of a legal covenant all the contingencies connected with a great and complicated service.

11,751. Then as regards the right of compensation to officers, the Secretary of State stated yesterday that it is left to the Secretary of State to determine the amount, if any, of the compensation to which an officer might be held entitled. Might I in this connection draw the attention of the Secretary of State to the following recommendation contained in the Lee Report, paragraph 82, on pages 48 and 49. They say: "We recommend, therefore, that the Secretary of State should refer such claims for compensation, as they arise, for consideration and report by the Public Service Commission, which, being the expert authority in India on all Service questions, will be well qualified to form a just opinion. The Indian Members, however, would limit the references to the Public Service Commission to cases other than those necessitated by retrenchment or curtailment of work. In such cases they consider there would be no ground for compensation except for the incumbent of the post abolished." The question I wish to ask the Secretary of State is why no effect has been given to this recommendation?—We do contemplate that in many cases the Public Service Commission would be consulted. It seems to me very valuable that there should be consultation of that kind, but there is a difference, of course, between the conditions contemplated under the Lee Commission, namely, when the Government in all its activities was directly under Whitehall and the condition in which there is a large transfer of responsibility. That really makes the reason why we cannot go further than say we would encourage consultation with the Public Service Commissions. It would be very difficult, I think, to make it compulsory,

in view of the changes that are taking place.

*Mr. Zafrulla Khan.*

11,752. Secretary of State, would not it be, as a matter of course the case, that when the case comes up to the Secretary of State it will come up with the opinion of the Government of India?—Yes.

11,753. And possibly of the Governor-General as being charged specially with regard to the safeguarding of the rights of the Public Services and, as a matter of course, without making any covenant to that effect, as it were, the opinion of the Public Service Commission will in due course have been obtained?—I should think ordinarily that would be the case. I should think always, but I do not want to appear to be too rigid about it.

11,754. I rather thought that would be so?—I would have thought so. It seems to me to be the obvious course for a Secretary of State and the Governor and the Governor-General to take in circumstances of that kind.

*Sir Hari Singh Gour.*

11,755. Under the proposals of the White Paper the Secretary of State would be bound by the advice given by his advisers upon two points, namely, the framing of rules and, secondly, the decision on appeals. As regards the framing of the rules I wish to ask the Secretary of State whether the time has not come when he should frame rules limiting the right of compensation in accordance with the decision of the Law Officers of the Crown and the despatch of his predecessor Lord Peel quoted in the Lee Commission's Report, and make it abundantly clear that those are not cases for compensation?—I hoped I had made my position quite clear yesterday in answer to a number of questions. I did specifically say that we were basing our general attitude upon those two lines, namely, the opinion of the Law Officers of the Crown on the one hand, and the interpretation based upon grounds of wider equity given by Lord Peel as Secretary of State subsequently.

11,756. But that, no doubt, is the view of the Secretary of State to guide him in his executive actions?—Yes.

11,757. But what I was suggesting is that, in order to make sure that the rules do not contravene the opinions given by the Law Officers of the Crown, the rules should be framed now to the effect that the cases dealt with by Lord Peel and the Law Officers of the Crown are not cases admitting of compensation?—I do not understand that question. If I have followed Sir Hari Singh Gour aright, it would mean that there would be no compensation at all; is that so?

11,758. Yes, that is so: not in those cases?—In what cases would there be compensation?

11,759. That is a question. So far as I am concerned, in no case should there be compensation, but I am not dealing with that point now?—Then it is not worth our while going on arguing about it, because you take the view that there should be no compensation at all. I do not take that view: so there is no basis of agreement between us. I take the view that in certain cases there should be some compensation.

11,760. The point I was making to the Secretary of State was that the cases in which there should be compensation should be defined so that they may not be improved upon or enlarged later on?—The trouble is that you cannot define these cases. They are really indefinable, and, as I said yesterday, we have no intention whatever of involving the revenues of India in extravagant and unjustifiable expenditure under that head. That fact is shown by our record over the last fifteen years, but we do feel that somewhere or other there must be a discretion of this kind.

*Sir Abdur Rahim.*

11,761. I just want to put two or three general questions. Secretary of State, I should like to find out what your view is as regards the control over the Indian Civil Service and the Indian Police Service that will be left with the Provincial Government which employed the officers under the proposals of the White Paper?—Sir Abdur Rahim, would you make your question a little bit more precise?—I am not quite sure to what you refer.

11,762. I will take, for instance, the number to be recruited. Supposing the

Government of a Province says, "We want five officers," or something like that: will the Secretary of State have an absolute discretion to recruit a larger number if he likes?—Certainly, up to the cadre strength, he must have the ultimate authority. I do not think you can avoid that, but I am not at all contemplating a state of affairs in which there would be a difference of opinion upon a question of this kind. It is not as if each of those various interests is going out to try to have a controversy with the other. I would hope that there would not be a difference of opinion.

11,763. Would the Secretary of State, therefore, consult the Government of a Province as regards the number?—They always are consulted now, and certainly we should go on consulting them.

11,764. The Government or the Governor: that is the distinction I have in mind?—Constitutionally the consultation would be with the Governor, but in actual practice no doubt he would take the Government into his confidence. What happens is this, is it not, Sir Abdur Rahim: There is a cadre up to which you recruit and then you consult with the Provinces as to what their requirements are. Perhaps Sir Malcolm would amplify for the benefit of the Committee what I have just said. (Sir Malcolm Hailey.) There is a cadre strength laid down which contains an element of leave reserve, training reserve, and the like. Every year recruitment is made against calculations which show what are likely to be the number of vacancies in the cadre owing to various causes. The Local Government is always consulted as to the exact extent of those probable vacancies, and the Secretary of State then recruits that number of men who are necessary to fill up the vacancies that are likely to occur. To that extent the Local Government is always consulted. The Local Government is not consulted as to variations in the cadre year by year, though on occasion the Local Government does put forward to the Secretary of State the necessity for varying the cadre. For instance, under recent retrenchment proposals representations have been made that certain posts might be filled from the Provincial Service and not from the Indian Civil

Service cadre. It is on questions like that that discussion does take place between the Secretary of State, the Government of India and the Local Government.

Archbishop of *Canterbury*.

11,765. Would Sir Malcolm say when he speaks of Local Government now that would, of course, mean under the proposed changes the Provincial Ministry?—I think so in the future, yes.

Sir *Abdur Rahim*.

11,766. Then the Local Government will not be in a position to vary the number—I mean to vary the cadre?—(Sir *Samuel Hoare*.) No, you cannot avoid that, but, as I say, I hope that no difference of opinion would arise.

11,767. As regards posting that is one of the matters which is in the Appendix. How is that going to be worked as regards the posting of officers? Is it the Governor-General who is to do the posting, or the Government—I mean the Governor?—(Sir *Malcolm Hailey*.) The initial assigning of Indian Civil Service or Police Officers to their Provinces is carried out by the Secretary of State. The wording "posting" in the Appendix refers to the posting to particular appointments within the Province. The ordinary procedure is that the Departments concerned make suggestions for appointing a particular officer to the post of District Magistrate or transferring him, or the like. In my experience there is very seldom any difference between Ministers and the Governor as to these postings. They do come up to the Governor, and, on occasion, the Governor may have to speak to Ministers as regards the advisability of altering their proposals for postings, but it is not at the moment a matter which causes any great difference of opinion in my opinion between the Governor and the Ministers.

11,768. Sir Malcolm, may I just put this: Now, as regards the posting of the Members of the Civil Service that is in the Reserved Department, as it is called?—That is so.

11,769. But under the new Constitution there will be no such thing as a

Reserved Department in the Provinces, and the entire secretariat, I take it, will be under the Ministers?—That is so, certainly.

11,770. Then how are these postings going to be carried out—by the secretariat under the Ministers, or by any Officer attached to the Governor?—At present, of course, the majority of the Indian Civil Service are in Reserved Departments and proposals for their posting do come on the Reserved side to the Governor, though, at the same time, there are many Indian Civil Service Officers serving in Transferred Departments. They are serving, for instance, as Registrars of Co-operative Societies, and the like, so that Ministers frequently have a say in the postings and transfers of Indian Civil Service and other officers. That case arises particularly in regard to Indian Medical Service Officers who are all serving in a transferred Department. In the future, as Sir Abdur Rahim points out, all Departments will be transferred; there will be no Reserved Departments; and the Ministerial heads of these particular Departments will themselves be responsible for all postings and transfers, but where they concern the posting or transfer of a member of the Secretary of State's Services, the Minister in charge will have to obtain the concurrence of the Governor.

11,771. In every case the Government will have to go up to the Governor with the proposal?—(Sir Samuel Hoare.) You cannot say exactly what the procedure will be as a general thing. No doubt Governors will arrange their own procedure in their own way, but the general position is as stated by Sir Malcolm Hailey. Actually how it is carried out must be a matter for arrangement by the Governors in their respective Provinces.

11,772. What has struck me, and what I am putting to you is that under these proposals the Governor must have an establishment of his own—a secretariat of his own to carry out all these things?—(Sir Malcolm Hailey.) No, that is not involved at all. All these matters will be carried out in the ordinary secretariat. All that will happen will be that when

it is proposed, for instance, that a District Magistrate should be transferred, or an officer shall be appointed as Commissioner, or the like, the case will be sent to the Minister, or taken to the Minister by the Governor for his concurrence.

11,773. I see. As regards promotion up to the District Magistrate or the District Judge it is automatic, is it not, and, beyond that, there is an efficiency bar, and then there are selection posts, are there not?—The appointment of District Magistrate is not automatic; that is to say, that an officer is presumed to become eligible for the appointment of District Magistrate after about six or eight years' training. He is then definitely selected as District Magistrate usually in an officiating capacity, first of all, and subsequently permanently. It is therefore to that extent selection. I have known cases in which a Local Government has refused to appoint an Indian Civil Service Officer as a District Magistrate, and has kept him as a Sub-Divisional Magistrate practically the whole of his career. When a man is appointed a District Magistrate he remains in that cadre for the whole of his career, unless he is selected for the post of Commissioner, Member of the Board of Revenue, or any similar post.

11,774. Yes; but, ordinarily, the Indian Civil Service Officer becomes a District Magistrate, or a District Sessions Judge. That is his ordinary expectation?—Yes, that is the ordinary rule.

11,775. There is really no question of promotion at all then?—My point was that it is not in the phrase you used automatic, because, in some cases, we may keep a man waiting for a considerable time before we regard him as fitted to have charge of a district, but, as you say, the ordinary expectation of a Civil Servant is that at a certain time of his career he will become a District Magistrate, or a District Judge.

11,776. Then after that the Commissioner, or the Member of the Board of Revenue—those are what I think are called selection posts, are they not?—Yes, that is to say, that you might have, taking a Province like the Punjab,

28 districts and five Commissionerships, therefore out of your 28 permanent District Magistrates five have an expectation of becoming Commissioners. The proportion is much the same in Provinces like the United Provinces.

11,777. What I want to know is, under the proposals of the White Paper, who will make these selections for these higher posts?—(Sir *Samuel Hoare*.) I suppose the position will be exactly the same as it is with postings. (Sir *Malcolm Hailey*.) Yes, it will be the same position as with postings. One cannot say in advance exactly what the arrangements will be under the rules of business in each province, but substantially it will undoubtedly have to be the case that ministers will make recommendations for selection to commissionerships, but those selections will need the concurrence of the Governor.

11,778. It will really be that the Government will make the selections, but it will require the assent of the Governor or province?—Yes.

*Marquess of Zetland.*

11,779. May I interpose one question there, my Lord Chairman, just to clear up the whole of that matter? What would be the position with regard to appointments to the Secretariat? Would those require the concurrence of the Governor or not?—Yes, that is a posting which would require the concurrence of the Governor.

*Lord Eustace Percy.*

11,780. Provided that he is an All-India man?—Provided that he is an All-India officer, and, of course, if we continue the scheduled procedure, then all secretaries, save secretaries in the Public Works, or any other excepted Department, would be members of the All-India service.

*Sir Abdur Rahim.*

11,781. And that is the state of things as at present, is it not?—That is so, yes.

11,782. There will be really no advance in that respect—placing the offices more under the control of the Government of the future?—(Sir *Samuel Hoare*.) I

L109RO

think there obviously must be a change when a large transfer of new departments takes place. The position then of these officers will approximate more nearly to the position of the All-India services under the transferred departments. (Sir *Malcolm Hailey*.) The difference will be that the selection recommendation will be made in the future by ministers but will need the concurrence of the Governor. At present postings of Indian civilians, selections for secretaryships and the like, are all made within a reserved department.

11,783. But there are only a few posts that in filling up require the concurrence of the Governor now—the more important posts; the others do not require the concurrence of the Governor. Is that not so?—I do not think it is correct to say that, because being made in reserved departments the Governor can, under the rules of business, and I think nearly always does under the rules of business, require that all such cases should be brought to him. I think I am correct in saying that in nearly every local government these cases, coming within a reserved department, all come to the Governor by his rules of business.

*Lord Irwin.*

11,784. May I interpose to get this clear, my Lord Chairman? The essential difference between the present practice and what will be the practice in future, if I follow the argument, is the source which makes the recommendation to the Governor?—Yes.

11,785. At present in all the reserved departments, of course it is the reserved side which makes the recommendation. In future the recommendation will be made by ministers?—Yes, that is the entire difference and it is a very important one.

*Sir Abdur Rahim.*

11,786. May I know what your opinion is as regards this? Questions have been put as regards Indians holding certain responsible positions in the Irrigation and Forest Departments—that there has not been sufficient experience to say how far the transfer of the services and the control of the ministers and those in the

transferred departments has affected the efficiency of the departments or not. I should like to know from the Secretary of State as regards his experience of the Indian members of the Indian Civil Service, because quite a number of Indians have held very high posts in the Indian Civil Service in almost all provinces. Excepting the governorship, I think there is no post which an Indian has not held. I should like to know what opinion the Secretary of State has formed as regards their work?—(Sir *Samuel Hoare*.) It would be very presumptuous of me, I think, to make a wide generalisation after a comparatively short contact with Indian affairs. I would certainly say, however, that it seems to me their record has been a very good one. For further details, I would like to go to an experienced administrator like Sir Malcolm Hailey. (Sir *Malcolm Hailey*.) It would be very invidious if I had to express an opinion on Indian colleagues. I think where we have selected Indians for these high appointments, they have invariably done well. When I stated yesterday—which I think was the main point which Sir Abdur Rahim was referring to—that it would be necessary to see Indians filling the administrative posts of the departments we were referring to them, such as irrigation and forests, before we could say what had been the effect of the change, when I said that I was referring to the fact that the change that was taking place in those departments was not merely the substitution of Indians for Europeans, or a change that would take place, but a substitution of provincial services for All-India services, and it would be necessary to see some of the effects of the administration by members of the provincial services before we would be in a full position to judge of the change that was taking place in those departments.

11,787. In that connection, I should like to know whether it is not possible for the Government, as regards provincial services, to introduce a higher system of training and education than obtains now. I mean there would be no difficulty in their way, would there?—(Sir *Samuel Hoare*.) I suppose the main difficulty is money with all these things, is it not?

11,788. That would apply to all?—It applies to us here. I expect it applies equally to India.

11,789. There is one thing I want to know about: What is now the Political Department? You know at present the Legislature can deal with questions in that Department though in a limited way. Will the Legislature retain the same power over the activities of the Political Department when it goes under the Viceroy?—I am not quite clear. Is Sir Rahim asking this as a general question, or in its special application to the services?

11,790. Not as regards the services. As regards the Legislatures dealing with the Political Department, will they have the same power as they have now in the Legislatures?—What powers have they got now?

11,791. As regards discussing questions?—This question of course has nothing to do with the services, and it does raise the other issues connected with the States with which we have already dealt at some length. What occurs to my mind offhand—I did not know that this question was going to be raised to-day.

11,792. If you do not want to answer it to-day, I will not press it?—I would say it would come in better in a more general constitutional discussion.

11,793. Certainly; I will not press it. That is all?—I think if Sir Abdur Rahim would look back at my evidence which I gave on Section 52, he would find that I did say something about it then.

Sir *Abdur Rahim*.] I have no further questions.

Marquess of Zetland.

11,794. May I just ask one more question before we pass from that, because I am not quite sure that I understood Sir Malcolm Hailey's final reply about the Secretariat? Of course, I understand that in the case of any officer who is a member of the Secretary of State's service who is appointed to a Secretariat, the concurrence of the Governor will be required. But take the case of heads of departments who may be appointed from what will be provincial services, for example, the post of Director of Public Instruction. What I am not clear about

is this : In a case of that kind, would the Minister in charge of the Education Department be the final authority appointing the Director of Public Instruction, or would he have to secure the concurrence of the Governor to his appointment?—(Sir *Malcolm Hailey*.) When the Education Department or similar departments become entirely provincialised, then the appointment of the head of the department would not require the concurrence of the Governor unless some change was made in the present proposals which would secure that the concurrence of the Governor should be required for such an appointment. (Sir *Samuel Hoare*.) As long as he is a member of the All-India Services, then the concurrence is needed.

11,795. But he would not be a member of the All-India Service?—He might be now, might he not? (Sir *Malcolm Hailey*.) If I might make that clear : for some time to come in these services it is quite clear that the appointment of the head of a department will require the concurrence of the governor, but when they become completely provincialised, that is to say, when all the present members of the Secretary of State's Services disappear from them, then the concurrence of the governor will no longer be required in the terms of the White Paper unless some change is made in those terms.

Lord *Eustace Percy*.

11,796. Then the Departmental Minister of a provincial government in India will have a great deal more power over the appointment of a head of his department than a Departmental Minister has in this country?—(Sir *Samuel Hoare*.) That is about what it comes to.

Lord *Rankeillour*.

11,797. Will the Inspector-General of Police be appointed without the concurrence of the governor?—No; he is obviously a member of the Secretary of State's services.

11,798. And always will be under these proposals?—For the period set out in the White Paper and until Parliament takes some other decision.

Mr. *Zafrulla Khan*.

11,799. Secretary of State, with regard to paragraphs 176 and 179 at page 81, do I understand that, having regard to the functions which the Secretary of State's advisers will have to perform under these proposals, their main function will be a sort of safeguard for the services?—Yes.

11,800. Safeguard against whom? Against the Secretary of State?—Against the Secretary of State, against the British Parliament, against unsympathetic people in India—in fact against a great many people who in theory may exist, but, in practice, I hope will not exist.

11,801. Would not the Secretary of State himself be a sufficient safeguard against unsympathetic people in India?—I am not sure what the services would think about that. This, after all, is mainly intended to reassure the services.

11,802. What would be your own feeling with regard to the matter? Would not the services rather consider the Secretary of State, being a member of the British Cabinet here, responsible to Parliament, and so on, would be a better safeguard than two gentlemen, both of whom might be Indians?—I should like to hear Sir *Malcolm Hailey*'s view and Sir *Findlater Stewart*'s view about that. My own view is that the services do attach importance to this safeguard. (Sir *Findlater Stewart*.) I am quite sure they do, yes.

11,803. Then with regard to the last two lines of paragraph 179 : "Any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member,"—what happens if an appeal comes up to the Secretary of State and he desires to dismiss it, and two out of the three colleagues (let us suppose there are only three colleagues)—say that he ought to accept it?—(Sir *Samuel Hoare*.) At present I am reminded that the Secretary of State has a vote and a casting vote.

11,804. But my question is with reference to the language of the proposal as contained in paragraph 179, as to what would be the result. The proposal is that in the case of any order "the Secretary of State will determine the matters upon which he will consult

his advisers." Supposing there are three advisers, two of whom will not concur in his proposed dismissal of an appeal, then how does the matter stand?—I think this is a point that must be cleared up. As at present drafted, I read it to mean that the majority vote would decide.

11,805. So that what it really amounts to is not whether the Secretary of State should carry with him the concurrence of so many, but the Secretary of State in this particular matter must carry out the wishes of the majority, whatever they may be?—Yes, that is the present position.

11,806. That is under the proposal?—Yes; that is the present position; it is a continuance of the present position.

*Mr. M. R. Jayaker.*

11,807. Including his casting vote?—Yes, so long as his casting vote is included. I am assuming it will be continued.

*Mr. Zafrulla Khan.*

11,808. That is a matter of detail, but it is a matter that struck me might be a difficulty in actual practice?—Yes. Sir Austen Chamberlain is here, a former Secretary of State, and we could ask Lord Peel when he comes. I do not think that kind of case has ever arisen in living memory.

11,809. But we are talking of the future and of the proposal as here expressed. Perhaps a slightly different expression might meet the case?—We will look into Mr. Zafrulla Khan's point carefully, and perhaps make a more detailed suggestion as to what had better be done.

11,810. Now on the question of compensation under paragraph 134 on the next page, the last three lines of the paragraph are: "The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded." The first part of the paragraph safeguards all service rights existing as at the date of the appointment. What are these last three lines intended to safeguard?—This paragraph is intended to give the

Secretary of State the kind of discretion that we have been discussing.

11,811. The discretion given in the paragraph is: "Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable." Would that not be necessary?—It is really to meet the point of the accruing rights, and if it were held in drafting that "service rights" was a sufficiently definite expression to cover both existing and accruing rights there, there might not be so much need for a paragraph of this kind, but I think it is safer to have it in.

11,812. My point is this: provided the first part does sufficiently cover what it is intended to cover, the latter part might create criticism and suspicion in spite of the amplest safeguards provided in the White Paper?—We will look into Mr. Zafrulla Khan's point. We do not want to have anything in the proposals that is not necessary. I can, however, conceive cases, into which I should like to look further, that might necessitate a paragraph of this kind.

11,813. So far as compensation for the abolition of a post or a series of posts is concerned, I do not want to go into details, but may I take it as almost axiomatic that in considering any questions that arise, regard would certainly be had, whenever there was an abolition of a post or a series of posts, to the creation of new posts that might have occurred during recent years?—I think you have to take all those kinds of consideration into account, and it is because many of them such as that are indefinable that one has to leave the power rather general.

11,814. That is true, but I was thinking of this: For instance, in recent years there has been a large increase in the number of High Court Judgeships, of which a proportion has gone to the Indian Civil Service. It would be rather anomalous that they should be going on appropriating all the increase?—I fully appreciate Mr. Zafrulla Khan's point. It is a point that I do not dispute.

11,815. To my mind the more important question is as to what is going



to happen in future, and a proposal with regard to that is contained in paragraph 189. I understand that the general position has been subject to the actual proposals and the explanations that you have given, that you consider it wise that during this short period, as you have termed it, before which an inquiry will be made under this paragraph, and a new decision arrived at, there should substantially be no changes?—Yes.

11,816. I want to visualize what the period will be. I do not want to bind you to any specific period, but I look at it in this way. Although the period is described as short, and the second subparagraph of paragraph 189 itself is rather vague, I look at it in this way: It visualizes several stages. First the passing of the Bill which will take some time; then it is coming into operation, which is again an indefinite period; and then this definite five years after that before the Inquiry is commenced; and then our experience of inquiries resulting from constitutional changes and so on shows that there will be some number of years during which the Inquiry will be in progress?—I hope not. I do not want it to be anything like that kind of inquiry.

11,817. Let us hope not, but it will take some time. Then there will be the period during which the new changes will be under the consideration of the Secretary of State and his advisers and the Cabinet, and then put before Parliament for the approval of Parliament. It seems to me that the period will not be so short as you have had in view all the time. A further consideration is this. Supposing this period is not five years but a great deal more, and if all conditions in the meantime are to continue as they are that means that recruits during this period enter upon their service under the conditions that operate now, and then it logically follows that they must be guaranteed the continuance of all those conditions throughout their careers. It seems to me that even in the year 1975 (and I can prove it by these figures) in these so-called autonomous Provinces practically all the Heads of Departments will be people who with regard to the conditions of service and so on will be subordinate to and will be

controlled by the Secretary of State, rather than by the Provincial Government. 1975 is about the average date that I take?—Yes; but Mr. Zafrulla Khan, even if his calculation is correct, will see that it is not a difference between no years and 42 years, but it is between 30 years, if you take that as the life of a civilian and  $x$  number of years, the interim period before any change is made.

11,818. Yes, but I was developing a question. I want to press this consideration, that having regard to the view that the Provinces have taken with regard to these services and to the state of public opinion, it would be extremely desirable to make this period as brief as possible and as definite as possible, more particularly for the reason that any greater material required for coming to a decision upon these points would not be material with reference to the efficiency of Indians and so on, because you could not in any case get that within the period of five years, but it would be more with regard to the working of the new constitution and to give a breathing space, as the Secretary of State has put it?—Yes, and, broadly speaking, the effects upon recruitment generally.

11,819. During the course of your examination you have said on a good many occasions that you would like the views of the Indian Representatives on some of these points?—Yes.

Sir *Austen Chamberlain*.] Are you leaving the Statutory Commission or continuing on it?

*Mr. Zafrulla Khan.*

11,820. No; it is with reference to that that I am putting a further consideration?—Yes.

11,821. I want to put this to you. Perhaps my own view could not be better expressed than it has been expressed in the Memorandum submitted by the Government of Madras to the Indian Statutory Commission?—Yes.

11,822. It is in the Indian Statutory Commission, Volume VI, at page 26 of his Memorandum. This may be taken as the typical Provincial view which was expressed as long ago as 1928. So far as provincial matters are concerned, the

position is clear. Responsible self-government, if it implies anything, implies that the Province must be free to recruit its own servants as and where it likes. There can be no imposing upon it a body of men recruited under regulations, from sources and on rates of pay prescribed by some outside authority. The All-India Services in the Provinces should be provincialised on the lines already being followed in the case of All-India Services operating in the transferred field, e.g., the Indian Educational Service. All the prospects that the present members of these services now enjoy should be reserved to them. In the case of posts beyond the time-scale where the changes proposed in the Provincial Government make inevitable the disappearance of certain posts to which members of a service had always been able to look forward, adequate compensation in the form of personal pay should be given to those men from whom under the present conditions these posts would have been filled." What I want to emphasise is that this view was held five years ago, and this period of from 10 to 12 years before the results of the next inquiry are completed makes nearly half the period of an incumbent's service, and it is not a question that is arising to-day. The view which I now wish to put before you as an Indian Representative is that no doubt the Provinces must be prepared to accept the anomaly pointed out here in the nature of things for a certain number of years, but if that number of years becomes very long there will not be that reality about responsibility in the Provinces which alone can justify and on the basis of which alone the future constitution can be judged. I would, therefore, urge upon the Secretary of State the desirability of making his new proposals, after the required information has been obtained and the material has been gathered, by whatever form of inquiry he desires, as public as possible; and one way of doing that, I venture to suggest is this; During the discussions in the Services Sub-Committee of the First Round Table Conference it was thought that perhaps 1939, which was one of the dates fixed in the Lee Commission's Report for certain averages being arrived at, would perhaps be a good date for the new proposals to be

brought in, if it were possible to do so, I am perfectly certain the Secretary of State cannot say Yes or No to that at the present moment, but I have expressed that view, and I hope the considerations on which it has been passed will be kept in view?—I am much obliged to Mr. Zafrulla Khan for putting forward a view that I know is very strongly held in some of the Provinces. It is a view that this Committee certainly cannot ignore. Obviously we shall take into account what he has said. I can assure him that so far as I am concerned, I have had in mind very much the kind of difficulties that he has just explained to the Committee. None the less I have come to the view that, taking into account the many reactions of proposals of this kind, the White Paper proposals are, on the whole, the better proposals, but I can assure him that, whether that be the case or not, certainly I, and I am sure, all Members of the Committee, have taken note of what he has said.

11,823. One final question or, rather, suggestion, and it is this: It is with reference to something that was said yesterday with regard to the Irrigation and the Forest Services. With regard to all Services that may be provincialised, may I put this to you, that when a Service is provincialised it would perhaps not be fair to force any Local Government to agree as a rigid matter, to any particular proportion of Europeans being recruited into that Service on account of the danger that the Province might then be forced to recruit second- and third-rate men to those Services under the new conditions?—Yes.

11,824. I do not know whether you would think that that would be a very relevant consideration?—Yes, I think so, and one of the difficulties, of course, is the difficulty to which Mr. Zafrulla Khan himself alluded yesterday that even with no desire whatever to have anything in the nature of racial discrimination a province might offer, such terms of recruitment as to make it quite impossible for any European to take an appointment, or any but an inferior European. That is one of the difficulties.

11,825. On the other hand, we have had cases (I think Sir Malcolm Hailey would be able to recollect them) and I have some in view in the Agricultural

Service of the Punjab, where it was found that expert services of special kinds were required, and Europeans on contract were employed to render those expert services, and it would always be possible to do so?—Yes, it would be possible, certainly.

Mr. *Zafrulla Khan*.] The only point I want to stress is that laying down any kind of compulsory restriction of that kind would perhaps not conduce towards the best interests of the Service. That is all I have to ask.

Sir *Manubhai N. Mehta*.

11,826. One question about the Secretary of State's Advisory Council, Proposal 176. That makes a mandatory provision that out of not less than three two members should be appointed out of those who have put in 10 years' service or more under the Crown?—Yes.

11,827. Does not the Secretary of State consider it also advisable that some such provision should be made for including Indian members in the Advisory Council?—I said yesterday that it was certainly our intention to make no change in the procedure.

Sir *Manubhai N. Mehta*.] But here, if a mandatory provision like this is provided for men from the Service, should not some mandatory provision be made for Indian members.

Sir *Austen Chamberlain*.

11,828. Does not the phrase cover Indians as well as Europeans?—Certainly, and, Sir *Manubhai*, there is no ulterior motive in this phraseology except to avoid the appearance of differentiation between one kind of official under the Crown and another.

Sir *Manubhai N. Mehta*.

11,829. The practice has continued now for 20 years of appointing an Indian to the Secretary of State's Council, and Sir *Tej* was so appointed?—I cannot imagine the practice being discontinued.

11,830. Would the Secretary of State be prepared to leave it a mere question of practice instead of making a definite provision? As we provide for Service men, would it not be better to provide for Indians?—I am very open minded about it. I would have thought it better

to leave it as it is, but it is not with me a question of principle at all.

Mr. *Zafrulla Khan*.] Would not a provision that at least two out of six must be Indians meet the point?

Sir *Manubhai N. Mehta*.

11,831. I do not say at least two should be Indians. Some of them should be Indians?—I will not say "some," because it is a very small Council, but anyhow I cannot conceive a break in what has, as Sir *Manubhai* has just said, been a practice for many years.

11,832. In the absence of any such provision there may be a break in the practice?—There has not been.

11,833. What I mean is that there would not be any compulsion?—There is not any compulsion now, and what has happened, as Sir *Austen* reminded us yesterday, has been that more and more we have availed ourselves of the valuable services of Indians on the Council.

11,834. It would create satisfaction in India if such a provision were made?—My own view is that it is better to keep it open.

Sir *Austen Chamberlain*.

11,835. You will bear in mind that if, under existing conditions, a number had been mentioned, it is quite likely that Secretaries of State would have felt that that number must be treated as a maximum, and the Council would not have reached the present numbers?—I agree there is that danger.

Sir *Manubhai N. Mehta*.] I do not ask for any maximum or minimum.

Sir *Austen Chamberlain*.

11,836. There is one question which was not cleared up yesterday, and I think has not been cleared up to-day about this statutory inquiry under Clause 189?—Yes.

11,837. I understand the meaning of the phrase to be an inquiry which takes place pursuant to an Act of Parliament?—Yes.

11,838. Do you mean it to be pursuant to a provision in the Constitution Act, or do you mean, by the drafting adopted here, that there should be a special Act of Parliament when the time comes nominating the Commission?—No,

I certainly do not mean that there should be a special Act. I mean that it should emerge from the Constitution Act, if there is a provision of this kind.

*Chairman.*] I propose to adjourn now and to meet to-morrow at 10.30 when the Secretary of State and his advisers will again be in the Chair.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow morning, 10.30 a. m.

5th October, 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Lord of Middleton.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Mr. Butler.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lt.-Col. Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] We will now deal with paragraphs 119 to 121.

before discussion takes place in the Indian Legislature.

Marquess of *Salisbury.*

11,839. Paragraph 119 deals with the relations between the new Legislatures and the Imperial Parliament?—(Sir *Samuel Hoare.*) Is that so? It deals with the cases in which the previous sanction of the Governor-General is required

11,840. Yes; certainly. What legislation is contemplated? It is not suggested that the Governor-General would be entitled to give leave to the Legislatures to deal with the Constitution Act itself?—No, certainly not. Paragraph 110 safeguards that contingency.

11,841. Yes, that is what I thought. Would the Secretary of State then say what kind of Imperial legislation the Governor-General might give leave for the Legislatures to deal with?—He will realise that the words are very very wide: “legislation which repeals, amends, or is repugnant” (even what is repugnant to any Act of Parliament) upon all those his consent is necessary before the legislation is introduced. What sort of legislation is contemplated?—It deals really with a number of Acts, some of them quite old Acts like Acts of the reign of William III dealing with the way in which loans for India should be raised. Speaking generally, most of the Acts dealt with are not of great importance or urgency, and I think I could give the Committee an illustrative list of the kind of Acts that we have in mind, and that might legitimately react upon Indian affairs and justify a discussion in the Indian Legislature. Lord Salisbury, however, can take it from me that those Acts are mostly, as I say, historic Acts of the kind I have just suggested to him, and Acts of no immediate political importance.

11,842. I am quite sure that that is what the Secretary of State intends, but that is not what is provided in the paragraph. The paragraph is quite general: Any legislation with the exception of what is provided in paragraph 110, if the Governor-General gives consent, the Indian Legislature may deal with?—I think Lord Salisbury will see that paragraph 110 covers a very wide and important field.

11,843. “Any law affecting the Sovereign or the Royal Family, the sovereignty or Dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act, and the Constitution Act,” that is to say, mostly dealing with what we call the Reserved Services and the Constitution Act; but there is a whole mass of legislation, the Secretary of State will realise, upon which the law in India is built up which will be all open to amendment if they get the consent of the Governor-General?—All open to discussion if they get the consent of the Governor-General.

11,844. You mean that the Governor-General might in the end refuse his assent to it?—Yes.

11,845. Yes, but, at any rate, the Legislature is to be competent to deal with all this legislation, not merely historic legislation?—I think it is difficult to avoid some provision of this kind. Discussions of this kind of course have taken place under the present regime.

[Earl of Derby.] I wonder if I could just ask this: Lord Salisbury, could you yourself give to us (because it is a most important point) some idea of the sort of Act that you think might come up? I think it would help us.

Marquess of Salisbury.

11,846. I can give one set of Acts at once: The Acts amending the Constitution Act?—The Acts amending the Constitution Act are excluded altogether under paragraph 110.

11,847. No, they are not. It is the Constitution Act itself which is excluded under proposal 110, not the amending Acts?—It would rest with Parliament to make a similar provision in the amending Acts.

Marquess of Salisbury.

11,848. It might do so, or it might not do so, but surely all this ought to be provided. Remember it is not merely what repeals or amends, but what is repugnant to, which is a most intricate matter.

[Lord Irwin.] Before Lord Salisbury leaves that point, which I think it is very important to get clear, is it not perfectly clear under paragraph 110, that it is outside the competence of the Indian Legislatures to make any law affecting the Constitution Act except as in the Act itself provided. I should have thought that was an absolute safeguard as regards that particular point.

Marquess of Salisbury.

11,849. My noble friend is much more competent than I am to construe an Act of Parliament. I should not have thought the word “affecting” would necessarily cover that?—It is certainly our intention that it should cover it.

[Earl Winterton.] Would it not help to elucidate this point if Lord Salisbury

tells us what, in his opinion, the word "affecting" does mean?

Marquess of *Salisbury*.] I am quite sure any noble friend will excuse me, but I am not a witness.

Earl *Winterton*.] You are putting forward statements, if I may say so.

Marquess of *Salisbury*.

11,850. After all, it is very necessary that this Constitution Act should be properly drafted, is it not?—I do not know whether Lord Salisbury means to imply by that that this is a draft of a Constitution Act. If he does I have told the Committee more than once that this is not a draft of any Act.

11,851. One cannot, of course, forget the Statute of Westminster. The Statute of Westminster is the Statute which controls, or, rather, justifies the full implication of Dominion status, and, therefore, anything which approaches Dominion status, or any enactment which will import it is a matter for us to scrutinise very carefully. There is no doubt that the Government intend that India should have Dominion status altogether. No one quite knows what Dominion status means, but that is what they intend. In those circumstances if you have a clause which reminds one at once of the Statute of Westminster, then it is necessary to find out exactly what it does mean?—I do not disagree with Lord Salisbury at all. We are all here to find out what these proposals mean. What I am trying to point out to Lord Salisbury is that, first of all, this is not the draft of an Act of Parliament, and it may well be that the words we have used do not exactly cover our intentions.

11,852. That is all I want to know?—I have told him, however, that our intention is that the Constitution Act and amending Constitution Acts should be outside the purview of the Federal Government altogether.

Sir *Abdur Rahim*.

11,853. Excepting so far as the Act itself provides?—Yes.

Marquess of *Salisbury*.

11,854. In order to clear the matter up with regard to other future legislation passed by the Imperial Parliament

which is not directly affecting the Constitution Act, will all that be open to amendment by the Indian Legislature?—This is not a question of amendment at all. This is a question of discussion.

Lord *Rankeillour*.

11,855. It is introducing legislation?—It is not a question of amendment at all. It is a question of discussion.

Sir *Austen Chamberlain*.

11,856. Is that so, Secretary of State? The opening words of proposal 119 are "will be required to the introduction in the Federal Legislature of legislation"?—The Imperial Parliament could always bar any intervention of that kind.

Marquess of *Salisbury*.

11,857. Yes, it can. What you foreshadow is that in any Act in the future passed by the Imperial Parliament which deals with India there will always be the sort of words: "Notwithstanding anything in the Constitution Act contained"?—I suppose that would be possible.

11,858.—I evidently have struck a vein which the Government have not thought of at all. I mean that particular set of points. I say that not by way of criticism?—Lord Salisbury is so anxious to make it appear that our proposals are very vague and badly considered that I must demur.

11,859. I am sorry. I did not mean to say anything in the least bit derogatory, but, on this vast subject, it is not surprising that certain points should have escaped attention. I quite understand?—I am not admitting that it had escaped attention.

11,860. It had not escaped attention?—No.

11,861. I just wanted to dwell upon the words "repugnant to" and how far they go. Of course legislation perpetually touches other legislation, and any legislation which is repugnant to an Imperial Statute will require the assent of the Governor-General before its introduction?—Yes.

11,862. But how is he to know whether it is repugnant or not?—I suppose he could receive directions from the Secretary of State and the Government here.

11,863. It may be so, but there are masses of small points in legislation which touch other legislation. Of course, I thought the answer which the Secretary of State would give me would be that he would have adequate advice in India as to whether it was or was not repugnant?—Yes, certainly.

11,864. Would he have a lawyer on his staff?—That would rest with him and the Government of the day to decide.

11,865. You think one of the Councillors will perhaps be a lawyer?—It might be so. It might be that there would be an Advocate-General who would advise him in questions of this kind.

11,866. But the Advocate-General will be part of the responsible Government?—We have not yet fully discussed the position of the Advocate-General: he might or he might not.

*Mr. M. R. Jayaker.*

11,867. The Federal Government may have an Advocate-General?—Yes.

*Marquess of Salisbury.*

11,868. Then I noticed a further word, but I do not want to dwell upon this. The Secretary of State will put it right directly. The words are: "The consent of the Governor-General will be required to the introduction of legislation"?—Yes.

11,869. But, of course, the repugnancy might appear in the form of an amendment in the course of the passage of the Bill?—Yes.

11,870. That is not covered by the words. I only just call attention to it?—No, but it is covered by Clause 121.

*Mr. M. R. Jayaker.*

11,871. Secretary of State, the provision is analogous to Section 25 of the present Government of India Act?—(Sir *Malcolm Hailey.*) Section 67. (Sir *Samuel Hoare.*) Yes; Section 67.

*Marquess of Salisbury.*

11,872. He can withhold his assent to the Bill?—Yes.

11,873. That is the ordinary veto, of course. But the point is that, whatever the value of the provision No. 119 is, it will not cover amendments to the Bill—only the introduction of the Bill. I

only call attention to the fact that that is so?—Yes.

11,874. Then supposing (I just put this because I think the lawyers who advise the Secretary of State ought just to think of these things) that in point of fact a Bill does go through the Indian Legislature without the consent of the Governor-General which turns out to be repugnant, will that be challengeable in a court of law?—I assume it would either be invalid or vetoed—one or the other.

11,875. It will be challengeable, you say. If it is invalid, that assumes that?—No. I can visualise the veto being applied or the Bill being reserved for the Secretary of State's assent.

11,876. No, because it might go through altogether; you see, and it might be found out afterwards that it was repugnant to an Imperial statute. These things happen continually in our own experience, of course?—Yes; I would certainly say that if it was not vetoed and if it was not stopped in a constitutional manner of that kind, then it could be challenged in a court of law and declared invalid.

*Mr. Morgan Jones.*

11,877. Before what court, may I ask, would it be challenged?—Presumably, the Federal Court.

11,878. Would a Federal Court have authority to override the decision of Parliament in a matter of that sort?—This is not overriding the decision of Parliament; this is carrying out the decision of Parliament. It is interpreting the Constitution Act. The Act, Mr. Morgan Jones, would be invalid from the point of view of the Constitution Act.

*Mr. Morgan Jones.]* Yes, I see.

*Lord Rankeillour.*

11,879. And there would be an appeal to the Privy Council?—Yes; I understand there would be an appeal to the Privy Council.

*Marquess of Zetland.]* Secretary of State, with regard to the validity of the Act, do not the words in Proposal 121 deal with that—"but an Act will not be invalid by reason only that prior consent to its introduction was not

given, provided that it was duly assented to either by His Majesty, or by the Governor-General or Governor, as the case may be."

Marquess of *Salisbury*.

11,880. Then the conclusion Lord Zetland would reach is that if a Bill did get through the Indian Legislature which repealed or was repugnant or was an amendment of an Imperial Statute, then it would be valid even if the Governor-General had not, in point of fact, given his consent?—Provided it does not controvert No. 110.

Marquess of *Salisbury*.] Yes, quite so.

Lord *Irwin*.] And I suppose, in such an event, it would always be open, would it not, to the Imperial Parliament to pass an amending Act?

Marquess of *Salisbury*.] Yes.

Marquess of *Reading*.] May I point out that the words read by Lord Zetland go a very little way. I am not quarrelling with him; on the contrary, I am very glad to have the point raised; but an Act would not be invalid by reason only of the fact that prior consent to its introduction was not given. If it yet turns out to be repugnant to an Act of Parliament, those words do not affect it. You have still got to deal with what is repugnant.

Marquess of *Zetland*.

11,881. May we know what those words really do mean? I must say I was very much puzzled by them. I do not understand what their real implication is?—The object, in a sentence, if I may put it in the words of a layman, is this: Discussion may be allowed; a Bill may be introduced; the Governor-General may give his previous sanction, and in the course of the progress of the Bill an amendment may be introduced that, we will say, controverts No. 110 or makes in some way an infringement upon the rights of the Imperial Parliament. Proposal 121 is intended to avoid the claim then being made, that because the Governor-General had given his previous sanction at the beginning of the discussion, the Bill at the end of the discussion was valid.

Marquess of *Reading*.] May I make one suggestion?

Marquess of *Zetland*.

11,882. May I just point out that these words say, "by reason only that prior consent to its introduction was not given." But if prior consent was not given how could the Bill be introduced?—Supposing it had escaped the Governor-General's notice and the notice of the Imperial Parliament. It might be in appearance, to start with, a matter of little importance.

Marquess of *Reading*.

11,883. Suppose there has been a slip, if I may put it in that way. For some reason, a Bill has got through which technically required the consent to its introduction, but it has not been obtained; yet if a Bill has gone through and then the Viceroy and Parliament and the Secretary of State have seen it and the assent has been given, it is not then to be declared invalid merely because the condition precedent has not been fulfilled. Is not that the true meaning of this?—Yes, exactly.

Marquess of *Reading*.] It is only to get over a possible slip.

Sir *Austen Chamberlain*.

11,884. May I put a case? I quite understand the case where the Governor-General's assent ought to have been given before the introduction of the Bill, but *per in curiam* it was omitted. It appears in the course of the discussion that this ought to have been done or when the Bill is presented for his assent he becomes aware that this ought to have been done, but he is ready to agree to it, and Section 131 provides that the law shall not be invalid because of the initial flaw, provided he has given his assent knowingly to it at the end?—Yes.

Sir *Austen Chamberlain*.] But suppose the oversight persists and it has not merely been introduced without notice being drawn to the fact that it ought to have had his assent but that his notice has not been drawn to that fact: when he finally gives his assent, is the Bill then valid and past all challenge or not?

Marquess of *Reading*.] If I may say so, certainly not. All that this Section



does (to which Lord Zetland has called attention) is to say that the mere fact of the omission to have got the consent to the introduction—that is, the condition precedent, shall not declare it invalid if it is subsequently ratified, but all the difficulties that exist to which Lord Irwin called attention on paragraph 110, where it says it shall not be within the competence of the legislature, that is not affected in any way. It is still open to challenge, because it is repugnant or because it is *ultra vires*. I am only speaking now as a lawyer construing it supposing it was an Act. None of these words affect that. It is either *intra vires* or *ultra vires* and this Section does not touch that; it only deals with what is a condition precedent, and says if there is a technical flaw of that kind or otherwise, that is cured if afterwards the Governor-General gives his assent or the Secretary of State does; but it leaves all the questions whether it is *ultra vires* or reversed—to which I understand Sir Austen Chamberlain is referring—quite open.

Mr. Zafrulla Khan.] May I make a suggestion upon this point? I think the question can be divided into two parts. Number one, where the Federal Legislature, with which we are dealing at present, has no competence whatsoever to legislate upon any particular subjects; those subjects are specified in paragraph 110. But, supposing it does proceed to legislate upon any of those subjects and somehow nobody discovers the lack of competence from beginning to end and the measure is placed on the Statute Book with all the assents and everything, nevertheless the Bill is *ultra vires* because there never was any competence to legislate upon any of these subjects and anybody could challenge it subsequently and declare it to be *ultra vires*.

Chairman.] I have no doubt there would be a challenge in the Courts.

Mr. Zafrulla Khan.] Yes, a challenge in the Courts. But where there is competence, but before the competence can be exercised there is a bar placed before the Act of legislation could be exercised, that is to say, of previous consent, then the matter stands thus: The legislature

has power to legislate upon those subjects but must have obtained previous consent before it enters upon discussion of those measures. If it subsequently appears that this bar had not been removed but nevertheless at the end of the discussions the measure as it emerged from the legislature had been assented to by the Governor-General, then the non-removal of the bar shall not operate to invalidate the piece of legislation provided it affected or related to a matter which was within the competence of the legislature. In the second class of legislation, which affects matters which are within the competence of the legislature, where there is only a bar the mere non-removal of the bar shall be cured by subsequent assent.

Lord Rankeillour.

11,885. May I support that view by asking a concrete question? For instance, if a measure were passed which was found to affect the coinage and currency of the Federation which presumably would not be barred by Section 110, and then that received the assent, I presume that under these words of Section 110 it would be valid, would it not?—(Sir Samuel Hoare.) It would be.

Earl of Derby.

11,886. May I ask one question? Suppose assent was given to the introduction of a Bill and during the passage of that Bill an amendment is moved which would make it *ultra vires*, has the Governor-General got the power to intervene and say, "If you pass that particular amendment, then my original assent to the Bill is withdrawn"?—I do not think it would work out quite like that, Lord Derby. I think what would happen would be this: the Governor-General would, no doubt, make the position quite clear to the Government and to the Legislature and at the end of the discussion he would refuse his assent to the Bill.

11,887. He can refuse his assent to the Bill, but has he no power to intervene to the extent of saying, "If that amendment is passed, that invalidates the assent that I have already given to the

Bill" ? It is no use having the discussion and fighting it out if at the end he is not going to give his assent. Surely there ought to be some provision that he should be able to notify the legislature that in the event of that amendment being passed then his previous assent is invalidated ?—I would like to consult the Constitutional lawyers upon a point of that kind.

Marquess of *Reading*.] Is it not covered, Secretary of State, by the fact that he has the power to withhold his assent ? I quite understand what Lord Derby was putting, and can imagine something of the kind happening. Then, I should have thought it was open on the paragraphs as they stand, supposing those were translated into an Act of Parliament, for the Governor-General then to intimate to the legislature that if they insisted on a particular clause, amendment, or whatever it is, going through he shall withhold his assent, or he thinks that it is repugnant or whatever it is ; he gives them notice at once.

Earl of *Derby*.] He will have no power to prevent the discussion ; he will have to allow the discussion to go on, and simply say "If you pass it, it invalidates my assent".

Marquess of *Reading*.

11,888. Yes. "I shall not give my assent to the Bill" ?—Yes ; I see Lord Derby's point. Let me put it into a concrete form. Perhaps a question on which a discussion took place in certain circumstances might be especially dangerous would be a question discussing, we will say, the ratio of the exchange of the rupee, where mere discussion may stimulate speculation one way or the other. His point would be that although a Bill had started all right, in the course of the Bill a discussion of that kind was started and there would be no means of stopping it.

Sir *Hari Singh Gour*.

11,889. There is a means of stopping it because in Standing Orders the President of the Assembly cannot allow a discussion which enlarges the scope of the Bill. That is covered by the Standing Orders of the Legislative Assembly ?—

Yes. Anyhow, if I may, I would like to look into this point and consult my Constitutional advisers about it.

Lord *Snell*.

11,890. Would it not happen, if Lord Derby's suggestion were operative, that the Governor could at any time prevent the exploration of a subject which a discussion afforded ? He would say : "If this goes on I shall do so and so". Therefore, it would seem to restrict the free inquiry into the possibilities of a question ?—I am inclined to think that our proposals do cover the contingency in mind, anyhow where danger might be involved. After all, the Governor-General has very free powers in the field of his special responsibilities, and it might well be in the kind of case that I have mentioned that he could intervene under his special powers in the interests of the credit of India, but upon points like that I should like to consult my advisers.

Lord *Rankeillour*.] The point made by Lord Derby amounts to no more than the power the Speaker has at present in the House of Commons of ruling that a Bill by amendment has gone beyond its scope and can no longer proceed.

Sir *Austen Chamberlain*.

11,891. I do not think that one can treat this quite as a matter to be settled by the technicalities of our procedure, as to whether a particular proposal is within the scope of the title of the Bill. Let me put a specific case : A Draft Bill is submitted to the Governor-General and he says : "I cannot allow a discussion to take place on this Bill. I cannot allow this Bill to be introduced, because of such and such a clause". The Clause is thereupon withdrawn and the Bill is introduced without it. To that, the Governor-General assents. In the course of the discussion, the very Clause to which he took exception in the first instance is moved as an amendment : I assume it is within the title and scope of the Bill—the discussion which he intended to prevent, I submit, he has no power of preventing under your proposals as they now stand. All that he can do is to intimate that if that Clause is inserted in the Bill he

will refuse his assent ; but the discussion which he was anxious to prevent would have taken place ?—Yes. I will certainly take into account what Sir Austen has said. As I said just now to Lord Derby, I should like to look into this point in connection with the power of the Governor-General under his special responsibilities. I think it is possible that we may be covered there, but I will look into the point.

Marquess of *Salisbury*.

11,892. The Secretary of State, when he considers it will remember, will he not, that the remedy of refusing his assent to the whole Bill may import so much consequences on the other provisions of the Bill that the Governor-General might easily shrink from doing so merely in order to correct the iniquity of one clause. I hope he will realise that this big method of refusing the whole Bill is one which might not be always available for him ?—Yes. I should not admit that it will not always be available to him, but I would agree with Lord Salisbury that it is a very big weapon and one only wishes to bring it into action in the last resort.

Earl *Winterton*.] May I ask a question on the last point raised by my noble friend, Lord Salisbury ? Is there not a further safeguard under Proposal 90 ? That also deals with the point which Sir Austen Chamberlain put, in the Second situation which he visualised. Section 90 is "Any Act assented to by the Governor or by the Governor-General will within 12 months be subject to disallowance by His Majesty in Council." So, if, therefore, the point which Lord Salisbury put, or if the situation put by Lord Salisbury developed or the situation put by Sir Austen Chamberlain some time ago arose—

Earl of *Derby*.

11,893. No ; that does not deal with the point Lord Salisbury raised ?—Lord *Winterton* is right to this extent that paragraphs 89 and 90 must be all read in connection with these Clauses as an additional safeguard.

Sir *Austen Chamberlain*.

11,894. But the Secretary of State will see that if, owing to the fact that there

is so much that is valuable in the Act as a whole and, indeed, necessary, the Viceroy hesitates to refuse assent to the whole because of one particular clause that reasoning will affect the Secretary of State's action just as much as the Viceroy's ?—Yes.

11,895. That is Lord Salisbury's point ?—Yes.

11,896. And is quite distinct from what, I think, was Lord Derby's point and mine, which was that a discussion which the Viceroy intended to forbid and had forbidden on introduction as a condition of his assent to the introduction, might take place on an amendment subsequently ?—Yes. I am seized of both those issues and they are important issues. Sir Austen, no doubt, has in mind the provisions in paragraph 28.

Earl of *Derby*.

11,897. That does not quite cover the point which has been raised, but, as the Secretary of State says, he will kindly look into it, may I leave it like that ?—Yes.

Mr. *M. R. Jayaker*.

11,898. May I ask the Secretary of State's attention to Proposal 52, which will meet with this point where power is given to the Governor-General to make rules of Procedure : "The Procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber ; but the Governor-General will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—(a) regulating the procedure of and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments or any other special responsibilities with which he is charged." He may make a rule under this power that all amendments of the character contemplated in this present question will not be moved subject to certain restrictions, and he has power to make special rules affecting the conduct and procedure of matters relating to special responsibilities in the Reserved Departments. He can act under that and make rules ?—That was the reason that I gave the answer that I

did to Lord Derby just now. He has really got to take into account all the various provisions.

Marquess of *Salisbury*.

11,899. I understand the Secretary of State is going to be good enough to let us have some little note to explain how the Government really intends these clauses to work. I know they were very intricate. I hope the Secretary of State will realise that I did no more than my duty to call his attention to the question?—I am much obliged to Lord Salisbury for raising the point. That is just the reason why we are all here, that such points and similar points should be raised.

11,900. He will let us have some note to explain the two points, what I may call the inadvertence point and the amendment point?—Yes.

Marquess of *Salisbury*.] And there is another point which I am going to call attention to in a moment.

Archbishop of *Canterbury*.

11,901. Before we pass from that, Secretary of State, there is still a little difficulty which has been raised about which I am not clear. Supposing all the consents necessary have been obtained and the Act is passed and has not been challenged, and then later on someone affected raises the point that after all it was repugnant to an existing Act of Parliament, then, as was said, recourse must be had to the Courts. But what Court would decide an issue of that kind?—Would there be an issue of that kind for a Court? Would not the definition of repugnancy rest with the Governor-General and the Secretary of State?

Marquess of *Salisbury*.] No; surely not.

Sir *Hari Singh Gour*.] No. Even under the present law if it happens to be repugnant to an Act of Parliament any Court of law has got the jurisdiction to declare that it is so repugnant, and to the extent that it is repugnant, it is *ultra vires* and inoperative.

Lord *Eustace Percy*.] Surely that is not the case. The question is: The Court decides that it is repugnant to an existing Act of the Imperial Parliament;

but, under these proposals, if it has been passed and given assent to by the Indian Legislature, it will override that Act of Parliament.

Sir *Hari Singh Gour*.] No.

Lord *Eustace Percy*.] Yes; surely that is so.

Mr. *Zafrulla Khan*.] Indeed, it will.

Sir *Hari Singh Gour*.] The question of repugnancy to be determined by the Court will only arise when an Act is passed by the Indian Legislature.

Mr. *Zafrulla Khan*.] But supposing it finds it is repugnant to an Act of Parliament, but it is not repugnant to any of the Acts or matters affected in paragraph 110, then it will say: "This required prior assent." Not having received prior assent, it would have been invalid, but that defect has been cured by subsequent assents, and, therefore, it is valid.

Sir *Hari Singh Gour*.] You are only stating a specific case.

Marquess of *Reading*.] May I ask one question, my Lord Chairman, upon this? I do not want to intervene, if I can help it, in a debate of this kind which threatens to be a debate between lawyers. Is not this after all a question which will have to be considered and proper attention given to it and advice taken upon the subject? Is it a matter if it is in legal doubt to be discussed between us across the floor? Can we get any further with it?

Marquess of *Salisbury*.] I do not want to press the matter any further. All I wanted was the Secretary of State with his advisers to consider these points. I think it is clear that the Committee would wish that repugnancy should be always challengeable unless there is the prior consent of the Secretary of State it ought not to be possible to vary an Imperial Act of Parliament which slipped through by simple inadvertence.

Sir *Hari Singh Gour*.] Even the previous consent of the Secretary of State will not cure the repugnancy if it is there.

Marquess of *Salisbury*.

11,902. That is a matter we are not sure about?—I can say no more than that this type of question has been very

carefully considered by the Constitutional lawyers in Whitehall and I will discuss it again with them. I think it may well be that somewhere or other in the White Paper proposals we meet the kind of contingencies that have been suggested; but, anyhow, we will look into it and we will circulate a note to the Committee.

*Lord Irwin.*

11,903. Might I ask the Secretary of State when he does circulate that note if he would, for the benefit of the Committee, and indeed of myself (I ought to know it, but do not) outline exactly what is the present position of the Governor-General with regard to an amendment that may be introduced in the kind of form that Sir Austen Chamberlain anticipated that itself, if it had been in the shape of an original Bill, would have required previous sanction?—Yes.

*Earl Winterton.*] I wish to place on record one thing. I hope my noble friend, Lord Salisbury, will not think I am discourteous when I say that I demur to the use of the phrase he has just used. No Member can bind the Committee until the Committee has come to a decision. My noble friend is entitled to ask for an opinion. He used a phrase, and I do not agree to his views on this point, and I do not assent.

*Marquess of Salisbury.*] I apologise. I ought not to have used the phrase. I did gather that that was the general impression, but I am wrong, and I will not say another word.

*Earl Winterton.*] It may be, but it has not been put to the vote.

*Marquess of Salisbury.*] No.

*Archbishop of Canterbury.*

11,904. The Secretary of State will consider in his note the further point that supposing a challenge is made of an existing Act on the ground that it was repugnant what Court will be available to decide that issue?—Yes.

*Marquess of Salisbury.*

11,905. Now, Secretary of State, may I leave what I may call the technical part and go to a substantial point? The authority which is going to allow this legislation to be introduced is the Governor-General not the Secretary of

State, but, I presume the Governor-General is always in touch with the Secretary of State in matters of this kind?—The Governor-General at his discretion.

11,906. No doubt, but I do not press that. In small matters it might easily be that the Governor-General would not think it worth while to consult the Secretary of State. However, let us pass that by. At any rate, the Governor-General is the authority. I suppose the Secretary of State will say that the Governor-General, through the Secretary of State, is responsible to Parliament?—No.

11,907. I am now, if I may say so, dealing with substantial matters, not small matters?—Yes.

11,908. Substantial modifications of an Imperial Act of Parliament?—Yes.

11,909. The Governor-General assents to its introduction. Is the Parliamentary control over that really secured? There is no doubt that the Governor-General would not act except with the leave of the Secretary of State in a matter of importance, I mean, but both Houses of Parliament here would not have authority. The House of Commons no doubt would, but the Governor-General might assent, with the leave of the Secretary of State, to important modifications of the Imperial Statute without any assent from the House of Lords at all?—The position is just the same now.

11,910. But then we are dealing with a very different situation in the future. There is going to be a semi-independent Legislature with a responsible Government in India, and they are apparently to have the power, with the consent of the Governor-General, to vary Imperial Statutes, and the British Parliament is not to be consulted at all?—I would have thought myself that in cases of this kind—Lord Salisbury said himself in his question that he was talking of cases of substantial importance.

11,911. Yes?—I would have thought that cases of that kind cannot be dealt with without the full knowledge of Parliament. These things do not happen in a minute or in an hour, or in a day. These big questions presumably excite a good deal of controversy both

in India and here. Parliament is fully seized of what is going on. The Press is fully seized of it. I should have thought the control of Parliament and the Secretary of State would have remained very effective.

11,912. The Secretary of State will see the distinction, will he not? These Acts which are to be susceptible of modification by the Indian Legislature are Acts assented to by both Houses of Parliament after the full procedure which we go through in forming an Act of Parliament. They are to be modifiable with the consent alone of the Governor-General acting with the consent of the Secretary of State. That is a very different thing. Both Houses of Parliament are not consulted at all. One House of Parliament might check the Secretary of State if they thought he was going wrong. The other House of Parliament might be entirely ignored?—But if the questions were of such importance as Lord Salisbury suggests then surely the way to deal with them would be to extend the list in paragraph 110.

11,913. No?—That is a matter for the Committee to consider. My own view is that we have covered these important questions under paragraph 110.

[Sir Hari Singh Gour.] May I draw the attention of the Secretary of State to a decision arrived at at the Third Round Table Conference dealing with the question raised by the noble Lord? It is pointed out at page 60 of the proceedings of the Third Round Table Conference: "The existing Government of India Act embodies various provisions, all taken from earlier Acts, which place limitations upon the powers of the Indian Legislatures. The general effect of these provisions is *inter alia* that any legislation passed in India, if it is in any way repugnant to any Act of Parliament applying to India, is to the extent of the repugnancy null and void. It was felt that the form of these old enactments would be inappropriate for adoption as part of the Constitution now contemplated—a constitution very different in character from that of which they originally formed part; and that in substance, also, they would be unnecessarily rigid. There are certain matters which, without question,

the new Constitution must place beyond the competence of the new Indian Legislatures and which must be left for Parliament exclusively to deal with—namely, legislation affecting the Sovereign, the Royal Family and the Sovereignty or Dominion of the Crown over British India; moreover, the Army Act, the Air Force Act and the Naval Discipline Act (which, of course, apply to India) must be placed beyond the range of alteration by Indian legislation; and it may also be found necessary to place similar restrictions on the power to make laws affecting British nationality. But, apart from these few matters, it was held that the new Indian Legislatures, Federal or Provincial, can appropriately be given power to affect Acts of Parliament (other than the Constitution Act itself) provided that the Governor-General acting 'in his discretion' has given his previous sanction to the introduction of the Bill and his subsequent assent to the Act when passed: in other words, the combined effect of such previous sanction and subsequent assent will be to make the Indian enactment valid even if it is repugnant to an Act of Parliament applying to India."

[Marquess of Salisbury.] We have gone back to repugnancy, have we?

[Mr. Zafrulla Khan.] Will you read on?

[Sir Hari Singh Gour.] Yes. "In his decisions on the admissibility of any given measure the Governor-General would, of course, on the general constitutional plan indicated in the Report on the Special Powers of the Governor-General and Governors, be subject to directions from the Secretary of State. Beyond a provision on these lines no further external limitation on the powers of Indian Legislatures in relation to Parliamentary legislation would appear to be required."

[Marquess of Reading.] What page is that?

[Sir Hari Singh Gour.] Page 60 of the proceedings of the Third India Round Table Conference.

[Mr. Butler.] I think it is page 63 of the English edition.

[Mr. Zafrulla Khan.] It is in that green book.

Lord *Eustace Percy*.

11,914. Secretary of State, you made a slip just now, did you not, when you said that the position was the same at present. I do not think you mean to say that. At present, even with the consent of the Secretary of State, the Indian Legislature would have no power, for instance, to amend the Merchants Shipping Act?—Lord Eustace is quite right. I was speaking in rather general terms, and my statement was not accurate in details.

Marquess of *Salisbury*.

11,915. I am sorry to have detained the Committee so long, but may I just call attention to this point. I do not want to press it. I think the point I have suggested to the Secretary of State about the want of control by both Houses of Parliament is a very material one, and an almost vital point in certain respects, but I do not want to press it. He quite sees the point?—Yes.

11,916. May I just mention Paragraph 120 now?—Yes.

11,917. That extends the procedure of No. 119 to the Provincial Legislatures?—Yes.

11,918. The Governor-General is still the assenting party; it is not the Governor; it is the Governor-General still, but it is the Provincial Legislature. I would ask the Secretary of State to remember that difficult though it may be to detect repugnancy in the case of Central Legislation, the difficulty is multiplied when every Provincial Act has to be equally watched, because each of the Provincial Legislatures may make the same mistake about legislating repugnant to an Imperial Statute and the Governor-General's attention may not be called to it, and the same difficulty about amendments may arise in the Provincial Legislatures. Who is to tell the Governor-General when all these things are going on in the Provincial Legislatures?—I do not believe myself there is going to be the kind of difficulty that Lord Salisbury suggests.

11,919. It is evident it will multiply the difficulty very much?—Would Lord Salisbury repeat that question?

11,920. It is clear that the difficulties to which the members of the Committee have called attention, of inadvertence and of amendments repugnant to an Imperial Act of Parliament will be multiplied when you consider that the difficulties apply to every Provincial Legislature just as they do to the Central Legislature?—No, I would not agree. The difficulties are much less in the Provincial Legislatures. The scope of their powers is much more restricted and I think it will be seen that in the Provincial field there is far less likelihood of cases of repugnancy than there would be in the Federal field. I think, therefore, the cases that Lord Salisbury has in mind are less likely to arise in the Provinces.

11,921. That may be so, of course?—I think when they do arise, because they are rarer, greater publicity will attach to them, and I would think that administratively there would be no great difficulty in following the course of events. At present there is a considerable amount of legislative work done in the Provincial Councils. We follow it very closely here. I know I think pretty well what is happening in every Provincial Council. We have reports of their Bills. That would continue. The Governor of the Province would be the agent of the Governor-General. He would be following these events with great care, and I would have thought administratively there would not be the kind of difficulty Lord Salisbury suggests.

11,922. The Secretary of State is always an optimist and I am very glad he is?—I might retort that Lord Salisbury is always a pessimist.

Marquess of *Salisbury*.] Are you very glad of that, too?

Marquess of *Reading*.] May I make one suggestion on that?

Marquess of *Salisbury*.] May I put one more question?

Marquess of *Reading*.] Certainly.

Marquess of *Salisbury*.] The Secretary of State will realise that in these difficult matters the Governor will be furnished with no sufficient staff; he will not have a regular lawyer upon his staff; he will have a very diminished staff, we are told.

Earl of *Lytton*.] He will have a legislative department with experts to advise him on all Bills that are introduced.

Marquess of *Salisbury*.] Will he have that staff after the change ?

Earl of *Lytton*.] Surely.

Archbishop of *Canterbury*.] Provision is made for him to have what staff he pleases.

Marquess of *Reading*.] We always have to remember in the case that was put by Lord Salisbury, of the Act possibly getting through and getting the assent of the Governor or Governor-General, that there is still the provision of paragraph 90, and that is, that notwithstanding that the Act has been assented to by the Governor or the Governor-General it will, within twelve months, be subject to disallowance by His Majesty in Council.

Marquess of *Salisbury*.] Yes ; but that is the whole Act.

Marquess of *Reading*.] I am only pointing out that it is an additional safeguard. That is all.

Marquess of *Salisbury*.

11,923. I only wanted to point out that all these difficulties of the Central Legislature are repeated in the Provinces and exactly in the same way the want of Parliamentary control of the Imperial Parliament which might be called attention to in the case of the Centre will be true in the case of the Provinces, too, so that the Imperial legislation might be modified with the assent of the Governor-General by the Provincial Legislature without the assent of the House of Lords ?—Lord Salisbury has drawn his own conclusions from his questions and my answers. No doubt each Member of the Committee will draw his own, too.

Sir *Austen Chamberlain*.] I have no questions, excepting to reserve a possible right to ask questions.

Lord *Irwin*.] I do not want to ask the Secretary of State a question, but I want to clear up a point to which Lord Salisbury has called attention. I do not quite follow in what respect he conceives that the control of the House of Lords in all these matters will be better or

worse in future than it is to-day. He is contemplating a state of affairs in which the Governor-General and the Secretary of State behind him have sanctioned some project affecting an Imperial Act which he might deprecate. We all know what would be the procedure in Parliament at the present time if that were done, and it may well be our view that the House of Lords has very limited power in regard to it, but I do not quite follow in what respect he conceives that position to be worse under the future conditions.

Marquess of *Salisbury*.] It is quite clear that the situation, when you have a responsible government putting great pressure upon the Governor or the Governor-General is very, very different from what it is at the present time. These matters which are repugnant to an Imperial Act of Parliament might easily be pressed through by Indian public opinion, and then they would be assented to. The introduction of them would be assented to by the Governor-General acting with the consent of the Secretary of State and the two Houses of Parliament might be ignored. In the case of the one it would be fatal ; in the case of the other they might, in England, turn the Government out.

Earl of *Lytton*.

11,924. I think some confusion has perhaps arisen from a discussion of these Clauses 119 to 121 on the assumption that they introduce a new procedure. Is it not true, Secretary of State, that the effect of these Clauses is merely to limit the necessity for the previous sanction of the Governor-General or the Governor to certain cases specified in these Clauses instead of, as at present, to the introduction of all Bills ? Is it not the case that at the present time all legislation has to obtain the sanction of the Governor-General before it is introduced ?—Yes ; certainly.

Sir *Hari Singh Gour*.

11,925 No ; not all ?—I beg your pardon. Before it is introduced, did you say ? Only the questions enumerated in Section 67 of the Government of India Act.



Earl of *Lytton*.

11,926. Yes. For those Clauses all legislation has to obtain the consent of the Governor-General?—Yes.

11,927. And the effect of Clauses 119, 120 and 121 is to reduce that number?—It reduces it in one direction. It does extend it, though, in the matter of Acts of the Imperial Parliament now governed by Section 65.

11,928. But the procedure of refusal or granting consent to the introduction of legislation exists to-day, and, therefore, when questions are asked as to how the Governor-General or the Governor shall know whether these conditions specified are violated or not, surely the answer may be drawn from the present experience of a Governor-General or a Governor. He has his legislative department, he has his advisers, and it is the business of those advisers to scrutinise all Bills to see whether they raise such points as will necessitate the refusal of the sanction to introduction. Is that not so?—It is true that we have based our proposals generally upon existing procedure.

11,929. And in so far as the Governor-General and the Governor under the Constitution Act will still have certain duties to refuse consent to a Bill in certain circumstances, am I not right in assuming that both the Governor-General and the Governor will continue to have advisers who will scrutinise legislation to see whether the points raised in these paragraphs are to be found in any particular Bill, and advise him about it?—I imagine the practice will be very much the same. One of the Constitutional differences—and the Committee should not ignore this fact—is that the legislative department presumably will be a part of the Federal or the Provincial Government. That, of course, does make a Constitutional difference. That does not exclude the possibility of the Governor-General or the Governor obtaining what advice he requires of his own.

11,930. But it would not be, would it, beyond the competence of the legislative department which advises the Federal Government also to advise the Governor-General in respect of such functions as may be raised by these paragraphs?—I am expecting that the Legislative De-

partment would give advice of that kind. It is, of course, conceivable that you might have an acute difference between the two sides of the Government. I hope it will not take place, but it is conceivable that there might be that difference. If so, the Governor-General must be competent to take his own decision. In a case of that kind, presumably it would be a controversy of substantial importance with all the publicity attaching to it and with a very close scrutiny taking place from Whitehall and the Imperial Parliament.

Lord *Eustace Percy*.] If Lord *Lytton* will allow me to intervene, there is this practical difference, too, surely at the present moment. The Legislative Department has got to advise the Governor-General whether a Bill which it is desired to introduce affects certain specified things, specified in Section 27 of the Government of India Act, and that is a perfectly simple job. But now they will have to advise the Governor-General whether this proposed legislation contravenes any Imperial Statute whatsoever.

Mr. *Zafrulla Khan*.] Affecting India.

Lord *Eustace Percy*.

11,931. Affecting India, which, after all, is practically a much more difficult job, is it not?—I agree.

Earl of *Lytton*.

11,932. One more question on the point raised by Lord *Derby*. Would not his point be met by requiring the consent of the Governor-General not merely to the introduction of any legislation which does the various things set out in that paragraph but also to any amendment to a Bill which would have the same effect? Would there be any objection to including those words?—I will certainly consider Lord *Lytton*'s suggestion, and I will look into it with the question generally.

Earl *Winterton*.

11,933. I only desire to ask the Secretary of State one question, reverting to the point put by Sir *Austen Chamberlain*. I understand Sir *Austen Chamberlain* to suggest that under Section 121, this situation might arise, in which the Governor-General had in error failed to

notice that a Bill could not have been introduced—that is to say, had failed to withhold his consent, and then afterwards, in error also, had given his assent. I may say that I think it is rather an extreme case, but that I understand was the point put by Sir Austen Chamberlain. Would not that be effectively covered for all practical purposes by Section 9C, which says: "Any Act assented to by the Governor or by the Governor-General will within 12 months be subject to disallowance by His Majesty in Council"? In other words, may I put the point in this way. While it is conceivable that a situation might arise in which the Governor-General in error both failed to withhold his consent and afterwards gave his consent, it would be unlikely that this would not be noticed by the Secretary of State here and by his advisers?—I agree with Lord Winterton, but, as I say, I will bring up these points in the Note I am going to circulate.

*Sir Austen Chamberlain.*] I think my point was answered to my satisfaction by Lord Reading. Provided the Secretary of State concurs with Lord Reading, which I imagine he will do, I will be satisfied.

*Earl Winterton.*

11,934. But I was not satisfied?—I will try to satisfy everybody.

*Earl Winterton.*] I was anxious to get the answer on the point which Sir Austen Chamberlain put. That is all I have to ask.

*Mr. Cocks.*

11,935. Secretary of State, if a Governor gives his prior assent to a measure which subsequently in the course of discussion is amended in such a way as to contravene the stipulations laid down in paragraph 119, it is always possible for the Governor-General to remit the Bill to the Chambers, asking them to reconsider it. If so, would not that meet the point raised by Lord Derby?—That was one of the points which we were discussing to some extent just now, was it not? It is so. Paragraph 88 also bears upon proposals of that kind.

*Lord Snell.*] Secretary of State, when you are looking into this matter, will you bear in mind the point that I put which has been rather intensified by Lord Lytton's suggestion that the amendments might be vetoed before discussion? Is it not possible, that it will happen in the legislature, as frequently happens in our own, that amendments serve the very useful purpose of exploration, and are often introduced with the connivance or good-will of the Government itself, in order that a subject may be enquired into and opened up. I should expect that it would cause the greatest dissatisfaction if that sort of enquiry were restricted.

*Dr. B. R. Ambedkar.*] The whole object of these Clauses is to stop the discussion which is going to affect the appeal of special responsibilities. That is the underlying purpose of these Clauses.

*Sir Hari Singh Gour.*] That is not to stop discussion?

*Dr. B. R. Ambedkar.*] Then what is the object of previous consent?

*Witness.*] I was not sure whether Lord Snell was expressing his opinion or whether he was putting a question.

*Lord Snell.*

11,936. I was asking you if you would kindly look into the matter at the same time?—Yes; at the same time.

*Mr. Morgan Jones.*

11,937. As I understand it, Sir Samuel Hoare, the position in future will be that the Indian Legislature will not in any way be able to amend the Constitution Act of its own free will?—Yes save as provided in the Act.

11,938. Might I ask whether the Secretary of State has contemplated that as experience grows of the operation of the Constitution Act it might be desirable for the Indian Legislature to express itself as to possible lines of developments. What procedure would be open to them to express their views in that matter?—It would be possible, I suppose, to have a resolution upon which a discussion could be based.

11,939. Just resolutions?—Yes.

11,940. On the second point which Lord Snell raised a moment ago, the

Secretary of State would agree that the Governor-General will already be heavily armed with powers of veto and reservation, and so on, whenever he feels that the Indian Legislature is liable to pass them by discretion, as we call it?—Yes.

11,941. Would not the Secretary of State therefore agree that to offer to the Governor-General the right to intervene in the middle of a discussion of a Bill because he apprehends the effect of certain amendments proposed is a little dangerous in so far as it might bring the Governor-General into conflict unnecessarily with the Legislature, and too frequently perhaps?—I am not expecting myself that cases of this kind will often arise, for this reason: The cases of importance are so obviously covered either by paragraph 110 or by the powers that the Governor-General and the Provincial Governors have in the field of their special responsibilities. I would therefore take the view that the exercise of these powers will be infrequent, and I am not sure whether I agree with Mr. Morgan Jones that to intervene at one period in a discussion is likely to create more controversy than intervention in another period; but, after this discussion this morning, I will take these points of view into account in the note that I will circulate.

11,942. Thank you; then I will not ask anything further upon that: May I call the attention of the Secretary of State to the last part of the sentence in paragraph 119? The Indian Legislature may not discuss matters relating to "the procedure regulating criminal proceedings against European British subjects?" I would like to get to know precisely what this means in view of the incident which has happened in the Empire recently?—Yes. I will tell Mr. Morgan Jones and the Committee what is the position. The position is this: It is a question which has in the past stirred up a very great deal of bitterness. Indian administrators will remember that in the last generation it stirred up acute bitterness here and in India. Fortunately, feeling is now much less heated on this subject and a compromise has been accepted. Sir Malcolm Hailey could tell us the details about that compromise because I think he was influential in bringing the European community and the Indian communities

together upon the subject. We were so anxious that this controversy should not be revived, in view of the fact that the compromise is working not unsatisfactorily, that we did put this issue into the list of questions that could only be discussed with the previous sanction of the Governor-General.

Marquess of Reading.

11,943. That compromise Sir Tej Bahadur Sapru at that time had a considerable part in; I think it was in 1924?—Yes.

11,944. And then a Bill was passed to that effect as a result of it. The whole matter was discussed during the time of my holding office and Sir Malcolm Hailey had to do with it also, but the effect of it was that the compromise was reached between both Indian and European members and that a Bill was passed which was carried into effect, and I do not think any question has arisen about it since. I think that is right, is it not, Sir Malcolm?—(Sir Malcolm Hailey.) Yes; that is so—1923.

Mr. Morgan Jones.

11,945. I am glad to hear there has been a compromise, but I am really entirely in the dark as to the nature of it, and I am really disturbed about it?—(Sir Samuel Hoare.) I can tell Mr. Morgan Jones in a sentence what is the nature of the compromise; Sir Malcolm will correct me if I am wrong. Criminal cases in which Europeans are involved: First of all, there is a procedure under which they are tried by two magistrates, and, secondly, in the jury, which is a mixed jury, the accused has a majority of his compatriots, European, if he is a European; Indian, if he is an Indian. (Sir Malcolm Hailey.) It withdraws the previous bar under which no European subject could be tried by an Indian Judge.

11,946. That is withdrawn?—(Sir Samuel Hoare.) That is withdrawn.

Sir Hari Singh Gour.] In case there should be any misunderstanding on the subject, I happen to be one who took an active part in the discussion which culminated in the amendment of the Criminal Procedure Code. It was not a compromise but an understanding reached

between the representatives of the two communities, in which both communities had to give and take, but it was not a compromise in the strict legal sense of the term.

Marquess of *Reading*.] Is not a compromise an understanding ?

Sir *Hari Singh Gour*.] The fact is that negotiations took place, and we took counsel together and, without the consent of the other party ; and the other party without our consent accepted the situation as it was presented to the Legislature in the amending Act of 1923.

Earl of *Derby*.] In other words, it was accepted by both sides and has worked perfectly well ever since.

Sir *Hari Singh Gour*.] I do not know whether Sir Henry Gidney would like to add anything upon that subject ?

Lieut.-Col. Sir *H. Gidney*.] I was a Member of that Committee, but I shall reserve my remarks, my Lord Chairman, until a later stage of the Proceedings.

Lord *Rankeillour*.

11,947. There is one point, Secretary of State, which I do not think quite came out in the beginning of the discussion. I take it, first of all, that the effect of Nos. 110 and 119 taken together is that, unless debarred by No. 110, the Legislature with the consent of the Governor-General can amend any Act of this Parliament ?—(Sir *Samuel Hoare*.) Yes.

11,948. One of the provisions of No. 110 is to debar anything repugnant to or contrary to the Constitution Act, but there are a certain number of perhaps borderline matters which I will illustrate in a moment which I am not sure would be affected by that or not. For example, if I might ask the Secretary of State to turn to page 117, Item 50, it says there : " Police (including railway and village police) except as regards matters covered by the Code of Criminal Procedure." The point I want to put is : Does that, by implication, make the Code of Criminal Procedure a part of the Constitution Act and would it not therefore be amendable under the operation of Proposal 110 ?—No. This is an item in the list of subjects that are exclusively provincial.

11,949. Quite so, but it there brings in the Code of Criminal Procedure as a

limiting power on the Provincial Governments, and I submit that it may be that that makes the Code of Criminal Procedure which is assumed to be operating a part of the Constitution Act ?—No ; the Code of Criminal Procedure is not an Imperial Act.

11,950. Was it not passed under the Statute of the sixties ?—It is an Indian Act.

11,951. It is a purely Indian Act ?—It is a purely Indian Act.

11,952. I beg your pardon ; I thought it was an Act passed after the Mutiny ?—No, it is a purely Indian Act.

11,953. Then that answers that question ?—Yes.

11,954. There is another question under Proposal 189. It says on page 84 : " At the expiration of five years from the commencement of the Constitution Act, a statutory inquiry will be held into the question of future recruitment " ?—Yes.

11,955. " The decision on the results of this enquiry, with which the Governments in India concerned will be associated, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament." Will that decision, when taken, form part of the Constitution ?—Yes. Lord *Rankeillour* I assume means : Will it or will it not be alterable by an Indian Government ?

11,956. Yes—by an Indian Government ?—My answer is : No, it will not be alterable.

11,957. And no doubt there will be other cases in which decisions are taken in pursuance of some section of the Constitution Act and those decisions will form part of the Constitution ?—That is so.

11,958. The only other thing I want to ask is : Is there any provision for either House of Parliament moving an Address to the Crown here praying His Majesty to withhold his assent from any Indian Bill ? Would it be possible ?—Would it be possible now, or under these proposals ?

11,959. Now ?—I could not say offhand without consulting the constitutional experts. I will ask them about it.

11,960. I would like to know whether there is the power and, if so, what opportunity there would be. If a prayer can be moved on the address I presume it can be done after the ordinary hours of business in the House of Commons and at any time here?—I will look into Lord Rankeillour's point.

Lord Rankeillour.] Thank you; that is all I want to ask.

Marquess of Zetland.

11,961. I have only one question I want to ask the Secretary of State, and that is with regard to parts of Clause 119. Under that clause the consent of the Governor-General will be required to the introduction of a Bill affecting the coinage and currency of the Federation or the powers and duties of the Federal Reserve Bank in relation to the "management of currency and exchange." I do not quite know what is involved by the word "management". Will it be within the competence of the Legislature to introduce and discuss, for example, a Rupee Ratio Bill, and if it is within their competence would the introduction of such a Bill require the prior consent of the Governor-General?—It would certainly require the previous assent of the Governor-General.

11,962. But it would be within the competence of the Legislature?—Yes.

11,963. I mean, it would not infringe upon the powers of the Reserve Bank?—No; it would be within the competence of the Legislature under No. 119. It is not one of the subjects excluded altogether. The subjects excluded altogether from the competency of the Legislature are under No. 110.

Lord Rankeillour.

11,964. But some of these might be put into the Act as part of the Constitution, and they would become so?—That is so.

Marquess of Reading.] You mean, if they were put into No. 110?

Lord Rankeillour.] I mean the reserved control of the Governor-General presumably will be put into the Act and that would bring it into the operation of 110.

Lord Irwin.] As part of the Constitution Act?

Lord Rankeillour.] Yes.

Archbishop of Canterbury.

11,965. I wish to ask only one question for information, Mr. Secretary of State. It is with regard to both Nos. 119 and 120. I suppose legislation affecting religion or religious rites and usages would include, for instance, marriage laws or the amendment of marriage laws, because it is very wide?—It is very difficult to be precise. I think His Grace will recognise the necessity of a rather wide discretion. On the one hand, we do not wish to exclude from the purview of the Legislature questions of social reform. On the other hand, we do not want to depart from the continuous policy that has been adopted in India since the beginnings of the British association, namely, to do what we can to prevent religious controversy bursting forth. I think, taking the two views into account, the view, on the one hand, of the orthodox Hindus as expressed by them the other day in their evidence, namely, that these questions should be excluded altogether from the Legislature, and the other point of view of the reformers, who would like no restriction put upon their discussion at all or upon legislation connected with them, we have come to the conclusion that the best course is to adopt the compromise of allowing a discretion in the hands of the Governor-General as to whether questions of this kind should or should not be discussed; but, as I say, we do not wish to debar the Legislature from dealing with questions of social reform; at the same time, we do not want to allow India to be plunged into a period of acute and bitter religious controversy.

11,966. It would be for the Governor-General or otherwise the Governor to decide whether or not these contingencies were likely to arise?—Yes.

11,967. Then one mere matter of drafting for intelligent understanding in No. 120: I presume that the words in the last sentence: "these latter subjects" mean subjects affecting religion or religious rites and usages. It is a small point. It is only the interpreta-

tion of "latter"?—Yes; it refers to religion and religious rites.

11,968. Then in these matters, apparently, a double consent will be necessary: that of the Governor-General and also that of the Governor?—It is the Governor in the Province, the Governor-General at the centre.

Archbishop of *Canterbury*.] But the Governor-General at the centre on the first part of No. 120 will be required to give his decision on these matters because the sentence: "or which affects religion or religious rites and usages" refers to the consent of the Governor-General to the introduction of these matters into the Provincial Legislature.

Mr. *Zafrulla Khan*.] It exempts them.  
Marquess of *Salisbury*.] It is all subject to "other than."

Archbishop of *Canterbury*.

11,969. "Other than legislation?"—(Sir *Findlater Stewart*.) The Governor is concerned in this matter only with his own ordinances and with Bills concerning religious matters introduced into the Provincial Legislatures.

Marquess of *Reading*.] It is all governed by the words "other than" and that excludes them.

Archbishop of *Canterbury*.] It is a question of drafting, but I should have thought obviously it implies that this is always a matter in which the consent of the Governor-General is required for introduction of legislation into the Provincial Council; then this was added to say that in these particular matters the consent of the Governor was required.

Marquess of *Reading*.

11,970. May I suggest to the Secretary of State that the words "these latter subjects" refer not only to religion and religious rites and usages but also to legislation which is repugnant to the Governor's Act or ordinance. It must not be confined to religious rites or usages?—(Sir *Samuel Hoare*.) Yes. I admit that with the punctuation and the wording as they are there is some obscurity. We must put it right.

Archbishop of *Canterbury*.

11,971. Then that point of drafting, Secretary of State, will be noted?—Yes.

Sir *John Wardlaw-Milne*.

11,972. In connection with No. 119 I wanted to ask the Secretary of State whether he did not think there was a little danger in the use of the word "management" of currency; whether he does not think that could be altered to cover the policy without the details of the management of the currency?—Yes; I will look into that point. As I say, this is not intended to be a final draft in any way.

Sir *Manubhai N. Mehta*.] In regard to Proposal 119 will the Secretary of State kindly let me know, amongst these subjects which are debarred and for which the previous sanction of the Governor-General is necessary, whether there is any objection to adding "treaty rights and privileges of the States." The Viceroy and the Governor-General have special responsibility. Amongst those special responsibilities the treaty rights of the States are included, and if most of the Governors and Viceroys' special responsibilities are included here, is there any objection to adding, "treaty rights and privileges of the States?" I will illustrate my meaning by one example. In the Civil Procedure Code there is one provision that no suits against Indian Princes can be entertained without the previous sanction of the Governor-General. Supposing one Province passes some legislation in which this is omitted, Princes might be liable to arrest before judgment, or their property in British India might be liable to seizure if such a provision was brought about. I am therefore anxious that the treaty rights and privileges of Indian rulers might be saved not only in No. 119 but also even in Section 110, because we have seen in No. 119 the effect of mere absence of the Governor-General's previous assent may not invalidate it. I therefore ask the Secretary of State kindly to include this also among the special responsibilities.

Mr. *M. R. Jayaker*.] Are not treaty rights outside the scope of the Federal Constitution?

Sir *Manubhai N. Mehta*.

11,973. I wanted that in No. 110?—Sir *Manubhai* has raised an issue that we have discussed once or twice before and it is well worth the attention of the

Committee. My answer to him is this : We have purposely not included the category of treaties either in No. 110 or in No. 119 for the very reason that Mr. Jayaker has just mentioned, namely, that treaties are outside the Federation altogether. They are in the field of paramountcy, and our very definite view is that in the interests of the States, just as much as in the interests of the Constitution generally, it would be a mistake to include treaties. As soon as you include treaties you bring them within the scope of the Federal Court and the courts of law. I would have thought that the States—anyhow, a good many of the States—would look with considerable misgiving at that result. Secondly, I suppose it would be true to say that most of these treaties deal with direct relations between the Crown and the Princes and have nothing whatever to do with the Federation at all. That being so, we have not included treaties ; not because we have the least intention of regarding them as less sacred than they have been in the past or requiring less protection than any of these other subjects that we have dealt with in No. 110. We feel, however, that the Princes have full justification for asking for some reference to the sanctity of their treaties but we feel that the place for such a reference would not be in the clauses of a Constitution Act but rather in a Proclamation by the Crown. I myself think that would be the best place to make such a declaration ; or in the preamble of an Act of Parliament. My own view is against the suggestion of a reference in the preamble of an Act of Parliament because inferentially that brings them within the Federal Constitution and also, as a result of past history, I am rather prejudiced against references in preambles to anything.

11,974. May I therefore bring out one inconsistency there would be ?—I accept the Secretary of State's reasons, but we have alluded to the Princes' privileges and the treaty rights amongst the Governor-General's responsibilities ; Section 52, for instance, provides that without the previous consent of the Governor-General no question will be allowed or no resolution passed in the Federal Chamber which would affect the rights and privileges of Indian States ?—Yes.

11,975. If such prohibition applies even to resolutions and questions in the Federal Chamber, is there no necessity for saving Bills affecting the States—legislation affecting the States ? It would be much more necessary ?—I still think that it is much safer from the point of view of the States not to bring it into one of the Clauses.

11,976. But look at Section 52 ?—Everything in Section 52 is left at the Governor-General's discretion.

Sir *Manubhai N. Mehta*.] But here, no discretion is left even to the Governor-General. In Section 52 without the previous consent or sanction of the Governor-General no resolution could be passed or brought before the Federal Chamber which would affect the States. I said there is greater reason for prohibiting any Bill to be brought which would affect the States.

Sir *Hari Singh Gour*.] But I was drawing your attention to Section 52 (b), which prohibits the discussion of any matter.

Sir *Manubhai N. Mehta*.] I asked what is the objection, if resolutions are to be prohibited, to having such prohibition against Bills.

Sir *Hari Singh Gour*.] You are assuming that only resolutions and questions are prohibited. I go beyond it and say what is prohibited under Section 52 is the discussion of any matters.

Mr. *M. R. Jayaker*.

11,977. May I ask the Secretary of State one point which I want to clear up in this connection. If you will kindly turn to No. 18 of the Proposals, and sub-clause (f) : it is : "the protection of the rights of any Indian States". Am I right in thinking that this Clause includes treaty rights or that it only includes those rights which you specify with great elaboration in paragraph 28 of the Introduction ? I am inclined to think it does not include treaty rights but only those rights which are specified and instances of which are given in paragraph 28 of the Introduction. I should like to know whether my interpretation is right ?—I should like to look into this point of Mr. Jayaker's. I am rather inclined to agree with him, but it depends upon a rather careful investigation of No. 28.

Sir Manubhai N. Mehta.

11,973. If the object is to exclude treaty rights from the purview of Courts, would that not be secured by a mere reference to the sanctity of treaties in some kind of Preamble or in a Proclamation?—It would have the effect of keeping it outside the Constitution Act, and, if it once gets into the Constitution Act, then you will have Courts of law interpreting it. I would, therefore, say that it is much safer from the point of view of these treaties in the States to keep it out.

11,979. Would not that danger be the same in either case?—No; if it is not in the Act, it could not then come in as a question of the interpretation of the Act.

11,980. But it might come in as a question of the jurisdiction of the Courts?—I am speaking now not as a lawyer, in the presence of some very distinguished lawyers. I should have thought there would be much less risk if you do not put it into the Act.

Mr. Zafrulla Khan.

11,981. Secretary of State, may I draw your attention to paragraph 118, at page 69, which deals with the procedure whereby the validity of legislation may be challenged. It is divided into two parts; the first part where it is proposed that a time limit will be imposed within which the validity of legislation may be questioned on certain grounds?—Yes.

11,982. That is to say, if the ground of objection is that a certain piece of legislation has been passed by a Legislature which was not competent to pass it, but that it was some other legislature in India that had power to make legislation on the subject, then such a challenge must come within a specified period?—Yes.

11,983. I take it that if a piece of legislation is objected to on the ground that it is repugnant to the proposals contained in Section 110, the time limit would not apply?—No; it would not apply.

11,984. Then the subsequent part also relates to objections of this kind, that wherever an objection of this kind is raised, say, in a Trial Court, provision will be made that the Court should make

a reference on this question alone to the High Court of the Province or, in the case of a State, to the High Court of the State?—Yes.

11,985. The suggestion that I make is that these two proposals should be put into two separate paragraphs. The first may stand as it is, that a time limit should be imposed which should be operative only providing there was competence in some legislature in India to legislate, but the objection is that this particular legislature could not. Then with regard to the second part, my suggestion would be that whenever the validity of the Statute is challenged in a Court of Law there should be power (it does not matter what the ground of objection is) in that court to make a reference on that point to the High Court?—Off-hand those seem to me points that are well worthy of attention; I will certainly look into them.

11,986. That is my first suggestion, for this reason, that if this paragraph remains as it is then other kinds of challenge which bring into question the validity of Statutes would have to be adjudicated upon by the Trial Court itself, leaving the matter in the ordinary course to be dealt with by the High Court on appeal, and it is eminently desirable that this kind of procedure for that highest issue relating to the validity of a piece of legislation should at once be referred to the High Court in order to obtain its final opinion upon it, and then the rest of the matter should be adjudicated upon by the Trial Court, and it should apply to all kinds of challenge to the validity of legislation. I quite see that it is not advisable to apply the time limit to that, and therefore it would be better to split this matter up into two parts?—I will certainly look carefully into that question.

11,987. Then the next matter I wish to refer to is again with reference to the second point, and here provision is made that reference shall be made to the High Court; but I should think that even in the case of a reference to the High Court, as the matter will involve the interpretation of the Constitution, there would be an appeal provided from the opinion of the High Court to the Federal Court?—Yes; I think that again we must look into. It seems a very reasonable proposal.



11,988. And if that is so, I am almost certain that there would have to be an appeal to the Privy Council from the Federal Court's decision?—Yes.

11,989. In view of that, my suggestion is that, of course, a first reference of such a matter, whether arising before a State Court, Trial Court or a British Subordinate Court, should be to the Federal Court?—I feel some difficulty in saying yes or no to a very technical question of that kind.

11,990. I merely make the suggestion ; I merely want that view to be on the record and my reason for it, and my reason is this : If a reference is made to the Provincial High Court and the High Court gives a decision upon it, and the parties to that particular litigation were either content with that decision or unwilling to incur further expenditure on an appeal to the Federal Court, you may have the result that the validity of certain Statutes is upheld in some Provinces and is not upheld or is questioned in other Provinces, where the High Courts of the Provinces say "No, this is invalid," and you may have a conflict in this matter and the Federal Court will be the only Court whose decision will apply throughout India. In a matter of this kind again it is very, very desirable that the final pronouncement should be by the Federal Court, and it should not be left to private litigants to decide whether they shall or shall not take it to the Federal Court, and an arrangement be made that a reference only upon that point should go to the Federal Court. Then, whenever such a question is raised, the opinion of the Federal Court would be binding throughout India afterwards with regard to that piece of legislation?—I am much obliged to Mr. Zafrulla Khan for his suggestions. We will look into them.

Archbishop of *Canterbury*.

11,991. I presume, Secretary of State, these are very important points which would come before us for review when we come again to the question of the Courts, which is still, I understand, one of the subjects upon which you wish to speak?—Yes ; I think that is true.

Mr. *Zafrulla Khan*.

11,992. Now with regard to just one question—I scarcely can call it a ques-

tion—it is merely a suggestion—as to this matter of legislation slipping through, there is only one matter to which I wish to draw your attention when you are considering it further in preparing your Note. As I have said, there are two classes of legislation ; one may be legislation which is ultimately found to be *ultra vires* altogether. With regard to that, there cannot be much apprehension, because if it is altogether *ultra vires* it can always be challenged in a Court of Law, particularly if it is repugnant to matters specified in paragraph 110. There is no limit. It can always be challenged. With regard to questions of consent, looking at the question from the practical point of view, there will be many stages at which that question will be raised and considered ; the first will be in the Legislative Department of the Province or the Government of India, as the case may be. The next will be this : It may be that when previous consent is required and the matter has not been considered and subsequent consent is given, it will be cured. Surely when a piece of legislation is before the Legislature, Provincial or Central, and anybody raises the question that it requires previous consent either of the Governor or of the Governor-General, would it not be the duty of the President to go into the matter and, if he finds that previous assent is necessary, to stop the further progress of the measure on that ground there and then?—Yes ; I think it would be so.

11,993. That is one stage which in almost every case is bound to arise because, whoever is opposed to the measure, apart from the experts who have looked at it in the Legislative Department, is likely to pay attention to this, and if a question is raised the President cannot say, "We need not pay attention to that." If it secures the subsequent consent of the Governor or Governor-General it will be cured. If he finds the assent is not there, he must throw it out. I am merely suggesting that is one of the stages through which legislation of that kind has to pass and it is an additional scrutiny which has not been so far referred to. It is not a question and I do not expect

an answer to it ?—I have taken note of what Mr. Mr. Zafrulla Khan has said.

Sir *Abdur Rahim*.

11,994. Secretary of State, with reference to paragraph 119, I want to be clear with regard to the previous consent which is necessary for any legislation regarding coinage and currency, or in relation to the management of currency and exchange. The Governor General has a special responsibility regarding the financial stability and credit of India, but, supposing legislation is proposed regarding coinage and currency, fixing, for instance, the ratio, which is not calculated to affect the financial stability and credit of India, would the Government even in such a case have to obtain the consent of the Governor-General, and if so, why ?—Yes ; for the reason I have just stated, that the discussion of certain of these questions may lead to a considerable amount of harm.

11,995. But you know as regards that there is a great deal of opinion in India regarding the ratio, for instance. Surely you would not bar out all discussions ? Supposing the Governor-General thought that the legislation that he proposed is not likely to affect the financial stability or credit of India in any way, why should not there be a discussion ?—Supposing he thought there were no dangerous reactions, he would allow a discussion.

11,996. But I mean the Bill itself may be such that any such apprehension is precluded : Would you preclude discussion, apart from the question of financial stability and credit of India, of any legislation regarding coinage and currency ? We have always felt that it was necessary to be somewhat precise in a matter of this kind. It has such very dangerous reactions. On that account, every time we have discussed these difficult financial questions, we have always said that this was one of the financial safeguards that we did regard as essential. That opinion was held not only by the Members of the Government and by the British Representatives in these various discussions, but it was held by a good many Indian representative public men as well. It is definitely one of the financial safeguards that we do regard as essential.

11,997. But is not the special responsibility wide enough ?—No ; we came to the conclusion that it was not. After all, in these questions of high finance, we have to be very cautious, and it was the considered view of not only the politicians but of business men as well that a safeguard of this kind was very essential.

11,998. We are not dealing with paragraphs 125 or 126 now, I understand ?—No ; I think we were going to keep them for later.

Mr. *M. R. Jayaker*.

11,999. On paragraph 120, I have one difficulty which I should like the Secretary of State to clear up : “ The consent of the Governor-General given in his discretion will be required to the introduction in a Provincial Legislature of legislation on such of the matters enumerated in the preceding paragraph as are within the competence of a Provincial Legislature, other than legislation which repeals ”—then it is mentioned. Now, what are these matters which are within the competence of the Provincial Legislature other than Governors’ Acts, etc., which are mentioned in paragraph 119. I should have thought none of the matters mentioned in paragraph 119, excepting the Governor-General’s Ordinance, or a religious Bill, are within the competence of the Provincial Legislature ?—It might be Acts of Parliament. That is one case that occurs to me. It might also be questions connected with criminal cases against Europeans.

12,000. They will be all Federal subjects under the list which you have given. They will be all Central. I want to know exactly what is intended ?—It might also be cases falling in the concurrent field ; but I will gladly make my answer rather more concrete in the Note I will circulate.

12,001. I wanted that to be investigated because there is a little doubt about it. Then, going back to paragraph 119, the words “ religious usage ” I am following upon the argument that his Grace, the Archbishop of Canterbury, took. You know that dealing with two ancient religions like Hinduism and Muhammadanism, a number of usages which look like religious

usages have come from the past which, judged by modern standards of public decency, public morality and public law, are undesirable?—Yes.

12,002. If you put the words “religious usages” it would be difficult to get them defined, and I will give you an illustration of what I mean. Take, for instance, the Hindu usage of dedicating young girls to temples. It is in many parts of the country regarded as a religious usage. Modern sentiment regards it as an immoral usage. Do not you think some saving ought to be made in favour of usages which, although religious to certain people, offend against modern opinions of decency or morality, or public policy, or any of those considerations?—We have found some difficulty in being more precise, and what we have done is to continue the existing words. I will look into the question again and consult with Mr. Jayaker over it, if I may, to see whether we could be more precise. We have found a difficulty in being more precise.

12,003. The fear which I have, and which many others share with me is this (if you will kindly turn to paragraph 18 which speaks of the special responsibilities of the Governor-General) that one of the Governor-General’s special responsibilities is the prevention of any grave menace to the peace and tranquillity of India?—Yes.

12,004. Supposing a Bill was before the Legislature requiring the consent of the Governor-General under paragraph 119, and that Bill related to a religious usage of the nature I have just mentioned to you, and supposing strong commotion went up in an orthodox province against a Bill which was regarded as relating to religious usage, and the result of that grave agitation was that the Governor-General thought there would be grave menace to the peace and tranquillity of India, he may be inclined to exercise his power under paragraph 18 and prevent that Bill. In other words, it would mean this, that the stronger the agitation tending to create the appearance of a menace to peace and tranquillity, the greater the chance of success of the orthodox community succeeding, under paragraph 18, in inducing the Governor-General to

L109RO

put a stoppage to the introduction of that Bill?—It is that kind of risk that has made us come down on the side of a rather general term like this, a term which Mr. Jayaker will remember has been in existence for a great many years, and a term whose application is fairly well understood as a result of this history. The Governor-General will have his discretion as to whether to act or not to act in such a case as Mr. Jayaker has put. If he satisfied himself that the agitation was a fictitious agitation, and that it was got up for the express purpose of intimidating the Government against some measure of social reform, I imagine that the Governor-General would exercise his discretion in allowing the proposals to go forward.

12,005. I have no doubt that is so. I was only suggesting whether you would not reconsider the expression “religious usage”?—Yes.

12,006. That is only a suggestion I am making?—I will certainly consider it again, and, if Mr. Jayaker would send us any suggestions, we should be glad. I have put to him our difficulties, and I have given him our reasons why we have used it.

Marquess of *Reading*.

12,007. Is it not in the Royal Proclamations that have been issued in the past? I have a recollection that it is in one. I only ask you to bear it in mind?—Yes, it is a phrase that has been in existence for more than 50 years.

12,008. I have seen it at various times?—I do not know what Lord Reading would say, but there is a good deal to be said for continuing a phrase that has been in existence for a considerable time, and which people generally understand.

Marquess of *Reading*.] If I may express an opinion I would agree with that.

Archbishop of *Canterbury*.

12,009. On the other hand, we have had a great deal of evidence that it was the use of these large terms which, in point of fact, has given great hesitation to Governments under the present regime from facing the necessity of some of these reforms?—Yes; we must

take all those issues into account. As I say, we have not ignored them. We have thought on the whole it was better to use this phrase, but, obviously, it is a matter for discussion.

Sir *Abdur Rahim*.

12,010. May I make one suggestion ?  
—Yes, please.

Sir *Abdur Rahim*.] I suggest "having the force of law"; suppose you substitute that, and narrow it ?

Sir *Hari Singh Gour*.] I am afraid it will not help us at all, because under Hindu law all usages embodied in the *Shashtra* have the force of law.

Sir *Abdur Rahim*.] The dedication of girls to the Temple is not recognised by law ?

Sir *Hari Singh Gour*.] According to Hindu law custom is the transcendent law.

Marquess of *Reading*.

12,011. It shows at once the difficulty you get into by the discussion between these two gentlemen ?—We will take it into account, Sir *Abdur*.

Mr. *M. R. Jayaker*.] The possible solution lies in appending words like "contrary to public morality or public decency," or some such expression. That is a suggestion which occurs to me.

Mr. *Zafrulla Khan*.] I am afraid expressions like "contrary to public decency and public morality" are as difficult of interpretation. They are bound to cause trouble because they have got to be interpreted.

Mr. *M. R. Jayaker*.

12,012. With regard to the other point, namely, the consent of the Governor-General with regard to coinage and currency, you are aware, Sir *Samuel Hoare*, that at the first Round Table Conference Indian opinion was contrary to the reservation of this right to the Governor-General. May I read in that connection a short statement in the Report of the Round Table Conference, page 14 of the copies supplied to us, where it was stated (I am speaking of the very first opportunity we had of expressing an opinion): "Upon the question of finance, Indian opinion was

that even the safeguards set out in the Report went too far, especially those giving special powers to the Governor-General." You are aware of that, that Indian sentiment as it has expressed itself there is strongly against the retention of this power in the hands of the Governor-General by way of giving prior sanction to the Bill ?—I would certainly agree that there is a strong body of opinion in India against this safeguard. We took it very carefully into account in our subsequent discussions, but we did definitely come to the conclusion that in the very difficult financial conditions that have arisen since the first discussion and with which it looks as if we shall be faced for some years to come, it was an essential condition.

12,013. Then do you think there is any necessity for giving this power to the Governor-General, namely, sanction to any legislation relating to coinage and currency even after the Reserve Bank is established, having regard to the fact that you are making the Reserve Bank free from political influence, and, having further regard to the fact that legislation dealing with the Reserve Bank would require the Governor-General's previous sanction ? I should have thought you would have made the Reserve Bank strongly entrenched from discussion and alteration by the public. Do you think there is any necessity for continuing this power in the hands of the Governor-General after the establishment and working of such a bank ?—Yes; we feel that it is really essential, and a complementary safeguard. You might have the operations of the Reserve Bank gravely compromised by discussions of this kind. Take, for instance, the case that is in everyone's mind, the case of the rupee ratio. You might very well have the foundations of the Reserve Bank being shaken by political agitation on the subject, and, particularly in the difficult early years when it was gradually getting itself started.

12,014. There is no time limit to the powers given in paragraph 119 ?—There is no time limit, nor, indeed, I think can there be a time limit given, but no doubt if things work well, and there is no need for the Governor-General to exercise a veto of this kind, discussions in course of time will take place.

12,015. The reason why I am pressing this point, Mr. Secretary of State, is this, that there is a strong feeling in India that there is an intimate connection between the development of industries and agriculture, and the regulation of the currency, and, as you have transferred to the popular Minister's hands the Department of industry and agriculture, those two Departments are so inseparably interconnected that no Minister can make much progress in industry and agriculture unless he has the power of regulating the currency of the country, and, as you have transferred one, it would not be wrong to transfer the other. That is the only reason I am driving the point?—I do not object to Mr. Jayaker pressing the point. It is a very important point, and this has not gone by default. Although we realise that the points he has just made are very strong you have to consider the whole position. You have to consider the whole future of Indian credit. You have to consider (and this is an integral part of the encouragement of industry to which he has just alluded) a problem which is very urgent for India, namely, the problem of getting new capital. It has always appeared to me, the more closely I have considered financial questions in India, that the great need of India in the future is capital, and it looks to me as if for many years to come the chief source of capital will continue to be London. I hope very much that the Indian capital will continue to be forthcoming, but, I believe, that for these great sums in the future it will be to the London market that future Governments of India will look, and, taking those very important considerations into account, we have felt that it was quite essential to put the credit of India above any kind of suspicion, and, in order to achieve that object, we did feel that these safeguards were necessary.

12,016. But you will have a double protection, if you will allow me to pursue the point, by one more question, you have made the financial stability and credit of India a special responsibility of the Governor-General. You have now brought the proposal of a Reserve Bank which is free from political influence.

L109RO

No alteration can be made by the Legislature in the Reserve Bank which administers currency and coinage. I should have thought these two would have been enough protection for any person who wants to send capital out to India?—The trouble is (I have said this before) that financial people are very conservative, and it was made very clear to me that this was a safeguard to which they do attach a very great importance, quite apart from politics, and, on that account, I feel that, chiefly in the interests of India, it is necessary to maintain it.

Sir *Abdur Rahim*.

12,017. May I just intervene? There are other countries which are not linked to Sterling which do resort to London very largely for credit?—That is so, certainly, but these things have grown up, Sir *Abdur Rahim*, as a result of experience over a great many years, and, believe me, the money market of the world, and the money market of London, as the greatest money market in the world, is a very conservative institution, and it is much wiser at the outset to take these safeguards, and to ensure by that means, as I believe we shall ensure it, the future credit and stability of the country.

Lord *Eustace Percy*.

12,018. Surely this particular safeguard which we are discussing now is in practice only a safeguard preventing the introduction of private Bills or private members resolutions?—Exactly.

12,019. And Mr. Jayaker would agree that no good purpose is likely to be served by the introduction of private Bills or Private Members Resolutions.

Marquess of *Reading*.] Why does it apply only to private Bills and Private Members resolutions? A Government Bill would require the Governor General's previous sanction.

Mr. *M. R. Jayaker*.

12,020. I do not know whether the Secretary of State admits the interpretation of Lord *Eustace Percy* that paragraph 119 relates only to Private Bills?—I think it covers all Bills, but in actual practice, I suppose, it would be applied to Private Bills in this financial regard.

for this reason, that if the Government wished to introduce a Bill of this kind it would either be with the Governor-General's approval, or it would not. If it was with the Governor-General's approval obviously no such controversy as he suggests arises. If it was not with the Governor-General's approval, he could intervene in the interests of the credit and stability of India.

12,021. That would not entitle him to prevent the Bill from being considered, because he could then only act under Section 18, under his special responsibilities?—Yes, but he could so act. There he could overrule his Ministers as a part of his special responsibilities.

Sir *Abdur Rahim*.] It is a treble safeguard.

Archbishop of *Canterbury*.

12,022. Is it pertinent to point out, Mr. Secretary of State, that while what you say would effect legislation under paragraph 119 there is nothing there to prevent discussion by way of resolution, so that the ventilation of public opinion on any of these matters, even the question of currency, would be secured?—Yes, but, your Grace, under paragraph 52 he has general powers.

12,023. Yes, but apart from paragraph 52, paragraph 119 deals exclusively not with discussion but with legislation. May I be sure about that. That is so, is it not, apart from these special powers the Governor has there is nothing there to prevent anyone bringing forward any resolution on these matters, and having them discussed?—Yes, that is so. There is a considerable difference, your Grace will see, between a resolution and a comparatively academic discussion, and the actual introduction of a Bill in matters of this kind.

12,024. Yes; still resolutions and discussions may affect legislation indirectly?—They may. Judging from the House of Commons they often do not.

Archbishop of *Canterbury*.] I hope that will not be so in the present case.

Dr. B. R. *Ambedkar*.

12,025. I want to ask one question, Sir Samuel, on these provisions in general. The ultimate purpose of these previous sanction rules would also of course be

achieved by the power of veto—the subsequent power of veto which the Viceroy and the Governors have got; so, from that point of view, there is really not much to be gained by these provisions. I mean although the Viceroy may give his previous sanction he is not thereby bound to adopt the Bill when it is finally passed; he has the power of veto. So, from that point of view, there is not much to be gained by the rules of previous sanction, which could not ultimately be gained by the power of veto?—I am not sure that I should agree with Dr. Ambedkar. The veto is a sanction of a somewhat different kind. It seems to me it is a bigger and more serious sanction. It comes after the Legislature has formally pledged itself to certain proposals; I think therefore it is a more serious sanction.

12,026. Apart from all that, so far as the main object is to prevent anything affecting adversely the special responsibilities of the Viceroy, the veto is an effective measure?—I was just coming to that second consideration. The veto has a long history behind it, and judged by British experience generally, the veto becomes more and more in course of time something in the nature of a Constitutional formality.

12,027. But what I wanted to say was this. So far as I am able to judge the only distinction that one could draw between the effect of a previous sanction rule and ultimate veto is that the one, namely, the previous sanction, prevents discussion, while the veto does not. Is that not so?—It is a difference.

12,028. That is a difference. Now, what I want to point out to you, Sir Samuel Hoare, is this: Surely if discussion is to be prevented because it is going to attack the special responsibility of the Viceroy, you will bear in mind that this previous sanction rule certainly cannot operate to prevent discussion, either in the Press or on the public platform outside the legislature, and cannot even prevent a public demonstration on an issue that would legitimately be brought under a previous sanction rule, so the only thing really that would happen under this is that while the public and the Press may be free to agitate and to demonstrate on a matter covered by the previous sanction rule,

the only body that would be muzzled would be the Legislature?—That is one way of putting it; it is Dr. Ambedkar's way of putting it.

12,029. Is it not a fair way of putting it? Surely the Viceroy's previous sanction powers are not going to be so widely extended in their operation as to cover the prevention of any discussion of a matter subject to previous sanction, either in the Press or in public meetings, or anywhere else?—I think there certainly will be discussion of that kind. None the less, I do think there is a difference between discussion in the Legislature and the comparatively irresponsible discussion outside. Secondly, this Sanction of the previous consent has been in operation for some time and it was accepted generally as a Part of the New Constitution at each of the Round Table Conferences? Thirdly, if Dr. Ambedkar will look at the categories set out in paragraph 119 he will see that for each of them there is a considerable demand for some kind of special precautions. For instance, if he will take the question of religious rights and usages: There he must have noticed the very strong feeling that certain sections of the orthodox Hindus have upon the subject. He does not agree with them; he thinks they are all wrong. At the same time, they do hold these views very strongly, and they would like questions of that kind excluded from the Indian Legislature altogether. Now, we have attempted to adopt a midway attitude between the two points of view and so on. With each of those categories I could make a similar defence, that there is a considerable body of opinion asking for some special precautions in these directions.

12,030. What I was trying to drive at was this, that while a number of the Legislative Council and a number of the Legislative Assembly may be free to discuss these matters outside in public, they will not be free to discuss them when they come inside the Legislative House. That is the only difference you are making by this previous sanction rule?—They can have resolutions, but that is substantially the case.

12,031. Now I just want to make one suggestion with regard to the point raised by Mr. Jayaker regarding the use of the expression "religion and re-

ligious usages", because that is a thing in which I am so vitally concerned. I am just making the suggestion whether it would not be sufficient to use the expression "articles of faith" rather than the phrase "religion and religious usages"?—I would have thought that articles of faith would have occasioned almost the same kind of controversy.

*Sir Hari Singh Gour.*

12,032. More so?—And the trouble of a new phrase of that sort I would have thought would have concentrated upon it more varieties of interpretation even than the old phrase.

*Dr. B. R. Ambedkar.*

12,033. I suggest that as far as possible the word "usage" ought to be avoided?—I will take note of what Dr. Ambedkar has said.

*Sir Phiroze Sethna.*

12,034. May I be allowed to put just one question to the Secretary of State? Are we to conclude, Secretary of State, from your replies to Mr. Jayaker that the London market has the last say in the matter of ratio?—No, certainly not.

12,035. I may remind you that in the course of the discussions on the Reserve Bank, India was in favour of a fresh inquiry, if not immediately, within a reasonable time?—Yes.

12,036. May we know if such an inquiry will be made?—I could not possibly in the middle of a discussion about the relations between certain subjects and the Legislature, embark upon a discussion about the Reserve Bank, and one of the proposals that emerged from a very expert inquiry that took place in the summer.

12,037. I put the question because I understood you to say that the views of the City here had to be considered because otherwise capital would not be sent out to India, and India needs more capital?—What I did say was that India needed more capital, and it would be a great mistake to disturb the views of the place from which I hope they will receive large sums of capital in the future; but I have never suggested for a moment that the City or any body of financiers have any

kind of veto upon the Government proposals. These proposals are made upon their merits, political and financial.

*Sir Hubert Carr.*

12,038. There is only one question I wish to ask. You have explained, Sir Samuel Hoare, the difficulty of being precise with regard to the field in which the Governor-General's previous sanction will be required, but will paragraphs 119 and 120 be wide enough to prevent any Bills being introduced regarding amending the Indian Police Act of 1861 or the Local Police Acts, without the prior sanction of the Governor and Governor-General?—It is not one of the categories here specifically excluded under paragraph 119.

12,039. I did realise that, but I was wishing to put the view that perhaps if it were excluded it would give greater confidence to the police and their personnel if they knew that no Bills could be introduced affecting the present position of the police without the prior sanction of the Governor-General or the Governors?—Yes. At present it is not included.

*Marquess of Salisbury.*

12,040. The Secretary of State will remember that one of the matters which was urged upon us, I think, by the police witnesses, was that the Act of 1861 should be sacrosanct from being upset except by the Imperial Parliament?—Yes. One of the difficulties that I think Lord Salisbury will realise, when he looks at the Act of 1861 is that it does not appear to me it would provide the kind of protection for which they were asking. I have not got the Act here, but so far as I remember it is a very short Act merely saying that certain administration should have certain responsibilities.

12,041. The Secretary of State is quite right. What is important under the Act is the regulations which are made under it?—Yes. Then if you come to regulations, as I think I said earlier in our discussions, the regulations amount to volumes and volumes of detail, some of it of great importance, some of it no doubt of administrative importance, but not of the kind of importance that the Committee I think have in mind when they are now asking me this question.

*Sir Hubert Carr.*

12,042. There is only one other field which has been brought up as requiring prior assent, and that was brought up by the Associated Chambers of Commerce of India in connection with certain legislation, and I see that also comes up this afternoon, so I will not press the matter here, but I would like to be sure that paragraphs 119 and 120 are not exhaustive of the subjects which will require prior assent?—They are exhaustive as the proposals stand now.

12,043. Then it will be up to the witnesses and others to try and make their point before the Committee as to the necessity for enlarging that field. Is that so?—Certainly. None of these proposals is final until the Joint Select Committee has made its report and Parliament has legislated; and no doubt there will be people who will ask for additions to this list; there will be people who will ask for subtractions from it. Nothing is final until the Act of Parliament is operating.

*Sir Austen Chamberlain.*

12,044. Secretary of State, I want to ask if you can supply us with some information, but I am not sure whether my request is a practicable one. Under the present Government of India Act a law made by any authority in British India or any provision which is repugnant to an Act of Parliament is invalid?—Yes.

12,045. Under the White Paper proposals, provided that the assent of the Viceroy has been properly obtained, such a law would not be invalid unless it came under the express prohibitions in No. 110?—That is so.

12,046. Would it be possible for you to give us in any form, some idea of the scope of the legislation which, under the existing Government of India Act, is outside the purview of the Legislature, and which will be placed within its purview subject to the assent of the Governor-General by the new proposals?—Yes, I think I could certainly do so.

12,047. I should be much obliged if you could, because unless one knows how far the present Indian law is dependent upon British Acts of Parliament, one does not know what is transferred?—Yes.



I did propose in this note to which I alluded earlier in the morning that I would include at any rate an illustrative list even though it may not be complete.

*Lord Rankeillour.*

12,048. Is it not proposed to put anything into the Constitution Act with regard to the Federal Reserve Bank? Is it proposed to legislate separately for that?—What is happening with the Reserve Bank is this. There was this very comprehensive and expert inquiry into the question in the summer. Previous legislation of the kind has taken place in the Indian Assembly, and the arrangement has been that a Bill would in due course be introduced in the Indian Assembly and that Bill would pass through the Indian Assembly if the Indian Assembly is ready to pass it. Some reference will certainly be needed to the Bill in this Constitution Act.

12,049. That may bring it under 110?—Let me just be clear about that. No, it will not bring it under 110; it will bring it under 119; but except as otherwise Parliament may determine, only the Imperial Parliament would be able to alter the proposals.

12,050. If the reference in the Constitution Act confirms the provisions of the existing Government of India Act, that would make it part of the constitution, would it not?—It would become a part of the constitution—to this extent, that a reference of some kind would be made to it in the constitution that would ensure the proposals of the Indian Reserve Bank Act only being alterable with the approval of the Imperial Parliament.

12,051. Then for our purposes it would bring it under 110?—I think it would, but I would like to look a little further into it.

12,052. It reads here as if it were not in the constitution. So do one or two other things for that matter?—I should like just to consider the matter. It is rather a peculiar position.

*Earl of Lytton.*

12,053. One final question of the Secretary of State. Sir Hubert Carr has mentioned a number of matters not at present covered by these clauses but which in evidence it has been suggested

should be brought within their scope. May I remind the Secretary of State of one other class which was referred to in evidence before us and it has not been mentioned to-day, namely, the rights and positions of certain classes of land owners. The Secretary of State will remember that there are classes of land owners in India having special rights, such as the Talukdars of Oudh and Inamdars of Bombay, who have definite rights and established positions. In addition, there are people in the province with which I was connected in Bengal who claim, not indeed a right, but something which is akin to a right under the permanent settlement in that province. I am not, of course, suggesting that the Legislature should be debarred from legislating on these subjects, but I will ask the Secretary of State to consider whether it may not be desirable to include among the subjects requiring special sanction before legislation is introduced, the position of these land owners to which I have referred and which was brought before us in the evidence of one of our sub-committees, I think?—Lord Lytton has raised a question that has been in my own mind for some time and particularly after the evidence that was given to the Committee in the summer. It seems to me that there is a strong case to be made for some kind of precaution in the type of case that he has just mentioned. What impressed itself upon my mind was this: that many of the cases that were brought to our attention were definite obligations undertaken by the Government of the day; sometimes as rewards for public services; in other cases as a continuation of religious grants that had been in existence under Governments before the time of the British Government. In cases of that kind I should have thought that there would be a considerable measure of support, both in India and in this country, for some such special precaution being applicable, such as the precaution of the prior sanction mentioned in paragraph 119. A more difficult question arises when you come to a big and comprehensive settlement like the permanent settlement, touching, as Lord Lytton knows better than anyone else, almost every corner of the life of

a province. Now there again there is no doubt I suppose in anybody's mind that it came about as the result of a bargain between the Indians and ourselves, and there again some kind of precaution might be justifiable. Upon both those questions I would very much like the advice of the Committee. I own myself I am impressed by the case that was made in the summer and by the need for some such precaution as that proposed in paragraph 119.

Earl of Lytton.] I am very much obliged to the Secretary of State. Of course, it will be a matter for discussion later on. I thought it well to mention it as one of the subjects about which discussion might be brought up.

Sir Hari Singh Gour.

12,054. There is just one question I wanted to ask the Secretary of State. Did I understand the Secretary of State to imply in answer to a question by

*(The Witnesses are directed to withdraw.)*

*(After a short adjournment.)*

Mr. Morgan Jones.] My Lord Chairman, before you call the witnesses, I would like to raise one point. Before the adjournment to-day a question was addressed by Lord Lytton to the Secretary of State for India to which he gave a long reply. I had intended raising a

Lord Rankeillour that after the Reserve Bank Bill is passed by the Indian Legislature, any amendment of that Bill would be with the concurrence of the Imperial Parliament or that no amendment could be made by the Indian Legislature except with the consent of Parliament?—The position is rather a complicated one. It is this, in a sentence or two: Here we are asking the Indian Legislature by its own legislation to carry out arrangements that we say are essential for bringing the constitution into being. Obviously if that arrangement is to take effect, it cannot be possible for the Indian Legislature at some future time to alter the conditions without which the constitution would not have come into operation without the previous assent.

Chairman.] I propose to adjourn now to half-past two o'clock, at which time we take the representatives of the Association of British Chambers of Commerce—Memorandum No. 74.

point of order arising from those two questions, but I see the Secretary of State is not present, and I therefore give notice that I will raise it when the Secretary of State returns.

Chairman.] That is quite understood.

10th October 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.

Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.

Dr. B. R. Ambedkar.

Sir Hubert Carr.

Lieut.-Col. Sir H. Gidney.

Sir Hari Singh Gour.

Mr. M. R. Jayaker.

Mr. N. M. Joshi.

Sir Abdur Rahim.

Sir Phiroze Sethna.

Sardar Buta Singh.

Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., Sir FREDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

Mr. Morgan Jones.] My Lord Chairman, last Thursday, you will remember, I notified you that I intended to raise a point of order on the return of the Secretary of State to the witness chair. I am obliged to you, my Lord Chairman, for having allowed me to postpone the question, but I think I ought to apologise to the Secretary of State for not having raised it the very moment that he gave his answer to which I referred, but I quite honestly believed that he was coming back in the afternoon and I should be able to raise it then. The question which I wish to raise is on the answer to question 12,053. The Committee will remember that Lord Lytton, right at the end of the morning session, addressed a question to the Secretary of State in regard to certain classes of land owners and the purport of his question was that he hoped that the Secretary of State would consider whether he might not reserve those classes of land owners as being a fit subject for precaution under paragraph 119. My Lord Chairman, if you will allow me, I would like to say one word as to why I attach importance to this point before I put it formally to you. I can quite understand (even though I, my Lord, may not agree) the Secretary of State being invited to consider necessary precautions with regard to Police and so on, where British interests and British interests alone are concerned, but, on this occasion, Lord Lytton invited the Secretary of State to

consider whether a precaution could not be exercised in respect of definitely Indian interests. I ought, in fairness to Lord Lytton, to say, my Lord Chairman, that he said of course that he did not suggest that the Legislature should be debarred from legislating on these subjects, but I do not think I am doing an injustice to the question of Lord Lytton when I suggest that he did indicate that he himself as a Member of the Committee had arrived at a conclusion upon this matter and was expressing his conclusion through the medium of the question which he was addressing to the Secretary of State. Not only that, my Lord Chairman, but the Secretary of State himself, whose position, I am quite sure, is clear to everybody, is a very difficult one, being a witness and a Member of the Committee, and I readily sympathise with him in that matter—the Secretary of State himself in his reply also indicated, not in set terms but by implication, that he too had arrived at a final conclusion on the matter. May I quote the sentences that are relevant from Lord Lytton's question: "I am not, of course, suggesting that the Legislature should be debarred from legislating on these subjects, but I will ask the Secretary of State to consider whether it may not be desirable to include among the subjects requiring special sanction before legislation is introduced, the position of the land owners to which I have referred

and which were brought before us in the evidence of one of our Sub-Committees, I think." Now, the answer of the Secretary of State is—I will not quote the whole of it but the part that is relevant : "It seems to me that there is a strong case to be made for some kind of precaution in the type of case that he has just mentioned." Then, he later on said this : "A more difficult question arises when you come to a big and comprehensive settlement like the permanent settlement, touching, as Lord Lytton knows better than anyone else, almost every corner of the life of a Province. Now, there again there is no doubt, I suppose, in anybody's mind that it came about as the result of a bargain between the Indians and ourselves, and there again some kind of precaution might be justifiable." Now it is quite true that both gentlemen clearly admitted that the Committee would have to consider this later, but my submission to you, my Lord Chairman, is that it is a little desirable, seeing that all of us have been specially enjoined not to discuss the merits of these questions outside these doors, that judgment should not be given at this early stage upon an important body of evidence like that which was given on behalf of landowners some time ago. If some Members of the Committee are to be free to express opinions from one body of evidence, then I submit they are all equally free, and it is an important point for this reason : That no one will deny, I think, that the question of permanent settlement is a most important question in the future decision as regards Provincial self-government in many parts of India. I merely ask, my Lord Chairman, that you from the Chair will make it quite clear that this question is not yet finally settled or decided upon by this Committee, and that not one of us is entitled to judge the issue at this early stage. I hope both gentlemen will forgive me for raising the point. I think it is a matter of importance.

*Chairman.*] I am much obliged to the Honourable Member for having given me private notice of his intention to raise this point. The matter of a breach of rule or of Parliamentary usage does not appear to me to arise. The Right Honourable Gentleman in the witness chair in his capacity as Secretary of

State for India tells us that he has taken cognizance of certain published proceedings of this Committee in their bearing upon a particular issue, and has made plain to us that as the Minister responsible he has been impressed by the arguments adduced. Like my Honourable Friend I should deplore any suggestion that the opinions of the Joint Select Committee upon matters within our remit have been prematurely formed, but I find no word of that kind in Sir Samuel Hoare's answer to Lord Lytton. Indeed, he indicates that upon both points at issue he is prepared to await the advice of the Committee. With regard to the raising of this question by Lord Lytton, if I understand Mr. Morgan Jones aright, his view is that Lord Lytton would have been better advised not to have asked the Secretary of State whether evidence adduced before a Sub-Committee had been considered by him and whether he had been impressed by that evidence. Is that not Mr. Morgan Jones' point ?

*Mr. Morgan Jones.*] My simple objection is to the implied decision which Lord Lytton raised and to which he gave expression.

*Chairman.*] Mr. Morgan Jones, of course, will realise that Lord Lytton as a Member of this Committee was drawing the attention of the Secretary of State in the witness chair to this matter, and was doing no more than any Member of the Committee does when he draws the attention of a witness before the Committee to the evidence given by a witness who has already appeared. I, therefore, decide that no breach of rule and no question of any breach of Parliamentary usage arise.

*Witness (Sir Samuel Hoare).*] My Lord Chairman, may I add one observation to the ruling that you have just given ? I would rather, if I may, not leave it simply upon the basis of the ruling of the Chairman upon a question of rules, though there, of course, we accept your ruling, I am sure, unreservedly ; but, I would assure Mr. Morgan Jones, as one Member of the Committee to another Member of the Committee, that the last thing in the world that I wished to do was to imply that my mind had been irrevocably made up upon any of these great issues. Indeed, he will see in the

actual answer that I gave him, I say specifically that upon both these questions I would very much like the views of the Committee. I think he will also find that I dealt with this question just as I have dealt with a number of other questions. Indeed, earlier in the week, I was asked by one of the Indian delegates whether I was dealing only with the proposals in the White Paper or whether I was also taking into account the evidence that had been given. I gave him the obvious answer that I was dealing with both. The answer I gave to Mr. Morgan Jones was in exactly the same category. I can assure him that there was no intention either on my own part or with a view to influencing the Committee to imply that a decision had been taken.

Earl of *Lytton*.] May I add a word, my Lord Chairman ?

*Chairman*.] If you please.

Earl of *Lytton*.] If I understand Mr. Morgan Jones aright, his complaint is that there was implicit in my question to the Secretary of State an opinion of my own on the subject of whether certain rights and privileges of Indian landlords should be included among the subjects that required the previous sanction of the Governor-General to legislation. I am not sure that even if I had an opinion on the subject I was to blame for having revealed that fact, but I would like to assure Mr. Morgan Jones that there was no opinion of my own involved in the question at all. May I remind the Committee of what we were doing on that occasion ? We were discussing subjects which in the White Paper were stated to require the previous sanction of the Viceroy before they were made the subject of legislation in the Indian Legislature. It is not quite the case as Mr. Morgan Jones suggests that those are only subjects in which British interests are involved. We were discussing matters of religion and matters of communal interests which are purely as between one set of Indians and another, but they are essentially questions which raise very acute controversy and feeling. For that reason it was considered in the White Paper to be desirable that the previous sanction of the Viceroy should be required. Then Sir

Hubert Carr brought to our notice a number of other questions which he considered might be included. It was in that connection that I recalled to the Secretary of State's attention the fact that there were so many questions dealing with land owners' interests which also raised acute controversy in India, and, without expressing any opinion as to whether they should be made the subject of previous sanction or not, I mentioned to the Secretary of State a category of questions which I thought might also be considered, but I specifically stated that all this would be the subject of discussion later on. I only raised it at this point so as to justify a discussion which might follow when we reach that stage.

Mr. *Morgan Jones*.] May I say, my Lord Chairman, that I am very much obliged to both the Honourable Gentlemen for their kindness in replying to me so generously. I hope it may be taken that I raised the point in quite good faith and I am quite prepared to accept your ruling.

Sir *Austen Chamberlain*.] I am quite sure that all the Committee will recognise that Mr. Morgan Jones acted in perfectly good faith, but I am very anxious that nothing that has passed this morning shall preclude the Secretary of State from continuing to treat the Members of the Committee and Delegates with the confidence and frankness which he has done hitherto and that he shall not draw the inference, and certainly a wrong inference, from anything you yourself, my Lord Chairman, have said, and I am sure an inference which would be distasteful to both of us, if not to all of us, that we desire to limit him when he is before us and puts in an expression of opinion. No doubt, he must have further opinions. We are entitled to know what his opinions are, but he will, no doubt, where necessity arises, reconsider his opinions in the light of the views expressed by the Committee or by Delegates. May I just add this, and I think Mr. Morgan Jones will agree with me, that if I may trust my memory there is no Member of the Committee beginning with myself, if I may on this occasion, and no Delegate who has not put tendentious questions indicating the

line on which his own mind was moving. It would therefore be doubly unfortunate if the only person whose mind we might not know was the Secretary of State.

*Mr. Morgan Jones.*] May I, as regards that, say this, my Lord: I think that Sir Austen Chamberlain will agree with me that if he got the whole of my questions all he can say is that he guesses that my mind moves in certain directions.

*Sir Austen Chamberlain.*] I think it is a very shrewd guess.

*Mr. Cocks.*] My Lord, before we pass from this, would it be possible for the Committee to be supplied with an impartial Memorandum on the Permanent Settlement, stating, first historically, just how it was brought about, and so on.

*Chairman.*] I do not know whether a Memorandum of that kind would be well received by the Committee at this stage. I might look into the matter and see whether something could be done. If he puts that question to me perhaps, the Right Honourable Gentleman in the witness chair would express a view as to the expediency of the course he suggests being pursued.

*Witness.*] I will look into it and see whether anything could usefully be circulated.

*Earl Peel.*

12,721. Might I suggest the Cambridge History of India which I reviewed the other day for the "Times"? I think he will find a great deal of information in that and it is close reading?—I think probably that is a very good answer.

*Chairman.*

12,722. We are dealing first of all this morning with paragraphs 125 to 129, "Administrative Relations between the Federal Government and the Units." I understand that the Secretary of State desires to make a statement preliminary to his examination?—My Lord Chairman, I want to say a word or two of introduction to the discussion of Clauses 125 and 126 for this reason: They are drafted in a very abbreviated form, and it may be that their drafting will seem obscure to certain Members of the Committee; it might, therefore, help our

discussions this morning if I made as a short introduction the following comments upon them. Section 45 of the existing Government of India Act declares that all Provincial Governments are under the direction and control of the Government of India and requires them to obey the orders of that Government. A provision of this character would be obviously incompatible with the conception of Provincial Autonomy. At the same time, it has to be remembered that while in certain spheres of work such as the commercial departments: railways, posts and telegraphs and in regard to such matters as customs and income tax the Federal Government will have its own agency, yet, even in these matters, it will depend upon the collaboration and in respect of a large part of its other activities, upon the assistance of Provincial administrative officers. Thus, the actual execution of orders in relation to such matters as immigration into India, extradition, control of arms traffic, all of them Federal subjects, will rest in the hands of Provincial officers, that is to say, the District Officers of various kinds. All that the first part of paragraph 125 does, therefore, is to emphasise the obligation of Provincial Ministries to see that such assistance is forthcoming as an essential condition of the successful working of Federation, and thereby to adapt Section 45 of the existing Government of India Act with the necessary restrictions to the new conditions. The rest of the first sub-paragraph states the extent of the Federal Government's right to see that these obligations are really fulfilled, but I should explain that whereas the words "every Act of the Federal Legislature" correctly express this Provincial obligation as applying to all Acts, whether they relate to Federal subjects proper, namely, the subjects set out in Appendix 6, List 1, or to concurrent subjects, that is to say, the subjects set out in List 3, the drafting of the latter part of the first paragraph requires clarification. It is not intended that the right of the Federal Government to give directions as to the fulfilment by a Province of its Federal obligations should extend to the concurrent sphere since all the subjects included in List 3 are to be entirely provincial, except to the extent that provision may be made for their regulation

by Federal legislation. The last sentence of the first sub-paragraph of paragraph 125, should, therefore, be read subject to this limitation, and as applying to List 1 subjects only.

The purpose of the second sub-paragraph of paragraph 125 is to give the Federal Government a right of direction as to the administration of purely provincial subjects (list 2, Appendix VI) if the actions of the province in this sphere are such as to prejudice the administration of a Federal subject proper. Thus, if a Provincial Government were so administering its Public Health and Sanitation arrangements as to interfere with arrangements regarded as essential by the Federal Government for the maintenance of quarantine in ports, the Federal Government would have the right to intervene. In brief, the purpose of paragraph 125 is to ensure to the Federation such authority in relation to the Provinces as will tend to the efficient performance of the purposes for which it exists. I am afraid that statement sounds somewhat complicated, but I think that members of the Committee and the Delegates when they read it will see that it is a necessary comment upon paragraphs 125 and 126.

Marquess of *Salisbury*.] I am sure we are all very much helped by these statements, Secretary of State. I see no reason whatever to apologise for them, if I may say so.

*Sir Hari Singh Gour.*

12,723. There was one point upon which I may ask the Secretary of State to implement his statement. It is to this effect. In sub-paragraph 2 of paragraph 125 the words are : "to any matter which affects the administration of a Federal subject" not "any matter which may affect the administration of a Federal subject," whereas in paragraph 126 the Governor-General is entitled to interfere in any matter when any grave menace to the peace and tranquillity of India, or any part thereof, is threatened. In the statement which the Secretary of State has been good enough to read to the Committee there does not appear to be any clear line of demarcation between the interference by the Federal Government in matters which affect *in praesenti* the administration of a

Federal subject, or matters which threaten to affect in the near future the administration of a Federal subject?—It is a point of drafting. There is no distinction so far as I can see intended between the words "affects" or "may affect."

*Sir Abdur Rahim.*

12,724. In the second paragraph of paragraph 125, the last words are "Federal subject" that does not include clearly concurrent subjects?—No, the second paragraph of paragraph 125 deals with Federal subjects only.

12,725. Exclusively Federal subjects?—Yes.

*Mr. M. R. Jayaker.*

12,726. It would include Reserved subjects, I take it?—Yes.

*Sir Austen Chamberlain.*

12,727. How then are the subjects which are concurrent subjects dealt with?—The administration is provincial.

12,728. I understand that the White Paper contemplates that if there is concurrent legislation the Federal legislation prevails over the Provincial legislation?—Yes.

12,729. Is there no provision to enable the Federal Government in that case to supervise and secure the due execution of the Federal law and giving it authority to intervene if, in spite of the passage of the Federal law, the Provincial Government continues to apply its provincial law?—In our proposals, Sir Austen, we go no further than to say that it is the obligation of the Provincial Government so to carry out its duties as not to compromise the decision of the Federal Government in a case of that kind. It is difficult to go further than that. I think Sir Austen will see the difficulty when I give him the most conspicuous instance of an actual case. Take the case of law and order. There is no intention under the White Paper proposals that there should be interference by the Federal Government in the administration of law and order in the Province, and that goes to show that one cannot go further than state the moral obligation upon the province in

matters of this kind to co-operate with the Federal Government.

12,730. I do not quite follow that, if I may pursue it a little further?—Please.

12,731. The intention of the Government is that where a subject is reserved for Federal legislation the Federal Government should have power to issue such instructions to the local Governments as will secure the execution of the Federal law?—Yes.

12,732. On a Federal subject?—Yes.

12,733. But the White Paper also contemplates that certain subjects will be left to Provincial legislation, but with authority to the Federal Government also to legislate if it thinks it necessary?—Yes.

12,734. Must there not be, if not the same, at any rate similar power to the Central Government to see that its Federal legislation is observed in that case as you feel necessary to secure for it in the former case?—I would have thought myself that there is this difference between the two categories. In the Federal field the Federal Government is acting under its exclusive rights and it has its Federal agents to carry out its policy in such cases as I have just quoted in my opening statement, cases like the administration of Customs, and so on, and correspondingly with certain classes of legislation—Income Tax, for instance. In the concurrent field *ex hypothesi* even though the Federal Government may be legislating there is something in the nature of partnership between the two. The Federal Government will be dependent upon the Provincial administration for its agents. It will not have agents in the concurrent field at all. I would have thought therefore in view of what appears to me to be a difference it was necessary to state the obligations in a somewhat different way for each of those two categories.

12,735. This is rather a matter of detail that I am putting to you now?—Yes.

12,736. To take an illustration which you have given, quarantine. Will the quarantine officers in all the ports be Federal officers, or will they not be dependent upon local officers for the execution of their Federal quarantine pro-

visions?—The quarantine officers would be Federal officers.

12,737. All the Medical Officers of Health?—The Medical Officers of Health will probably be provincial.

12,738. Surely the executive officers in administering quarantine will be the Medical Officers of Health, with such police assistance, if any, as they may require?—Yes, that is so.

12,739. Then I put it to you that the particular distinction which you have drawn, Secretary of State, will not hold. But, passing from that, I put this to you at this stage to invite your further consideration?—Yes.

12,740. I also put it to you that if you feel it necessary to reserve to the Federal Government a power of concurrent legislation it follows that it must be necessary to reserve to that Federal Government a right to see that its concurrent legislation is respected, and that where it exercises that right of concurrent legislation the importance of its authority being maintained, and its orders being executed, stands on exactly the same footing as in cases where it is legislating within its exclusive sphere. When it exercises the power of concurrent legislation it supersedes for that purpose the Provincial Government?—Certainly I will consider Sir Austen's contention, but I still have this difficulty in my mind. The concurrent field is really a field of provincial subjects, but provincial subjects in which some kind of uniformity is very advisable. The intention, therefore, of having a concurrent list is not to impinge upon the field of provincial autonomy, but to retain some means by which uniformity can be maintained. If uniformity is to be maintained I feel pretty sure myself that you must take provincial opinion with you. Our proposals are not based upon any sanctions; they are based upon a willing co-operation, and that if you are going to get provincial public opinion with you the less you dot the "i's" and cross the "t's" as to the powers of interference by the Federal Government the more successful you will be.

Marquess of Salisbury.] I do not know whether I might suggest to the Secretary of State that the statement he has



just made in reply to Sir Austen Chamberlain carries him a very long way, because if List No. III is examined it will be seen that there are a very large number of subjects which come under the concurrent powers; for instance, the regulation of the working of mines.

Earl of *Derby*.] Would you give us the page number?

Marquess of *Salisbury*.

12,741. Page 119: "Regulation of the working of factories; Employers' Liability and Workmen's Compensation; Trade Unions; Welfare of labour, including provident funds and industrial insurance; Labour Disputes." I must not make a statement, but I suggest to the Secretary of State all those come under the concurrent field and therefore it must evidently have been in the minds of those who drafted the White Paper that there would be federal legislation or might be federal legislation on all those subjects?—Lord Salisbury has quoted another category of cases which was very much in my mind when I gave my answer to Sir Austen just now. Lord Salisbury will see the difficulty if one goes the length that was just suggested by Sir Austen in the case of labour legislation. Suppose, for instance, the Federal Government passed labour legislation, we will say, a very comprehensive National Health Act or an Act for Maternity Benefit, or some bit of labour legislation, that would involve very heavy expenditure. The conclusion of Sir Austen's argument would seem to me to lead to the Provinces having that very heavy expenditure forced upon them against their will. I do not believe a system of that kind would work.

12,742. But would not that be rather a reason for not having included these subjects in List III?—No, I think not. You see, we have included them in List III as subjects upon which we wish to work to uniformity if the Provinces can be induced to co-operate.

Sir *Austen Chamberlain*.

12,743. Is this the kind of case that you have in mind, that the great majority of the Provinces are agreed, we will say, on a legislative working day of so many hours?—Yes.

12,744. That one Province refuses to agree?—Yes.

12,745. And that, accordingly what is desired over by far the largest part of India, is rendered impossible by the opposition of a single Province?—Yes.

12,746. That then the Federal Government should override the dissentient Province and give effect to the general will of the Indian Legislatures. Would that be a fair illustration of the case you have in mind?—Yes; the Federal Government would pass such an Act, I presume.

Sir *Austen Chamberlain*.] Then suppose the dissentient Province declines to administer the Act and continues to work the longer hours—

Marquess of *Salisbury*.] Or abstains from administering the Act.

Sir *Austen Chamberlain*.

12,747. Yes, or abstains from administering the Act; and in that Province factories continue to work the longer hours, thus establishing a ruinous competition with the Provinces in which the Federal Act is administered. What is the remedy—sweet reason?—I can see no remedy of sanction. What sanction could you apply to a situation of that kind?

Sir *Austen Chamberlain*.] If it were in the field or reserved legislation you would give authority to the Central Government to direct the Provincial Government and its officers to enforce the law. If you tell me that sanction is ineffective for the purpose of the joint list, will not it be equally ineffective for the other, and if it is effective for the Federal list, why should it not be effective for the joint list of subjects?

Marquess of *Salisbury*.

12,748. Might I in that connection remind the Secretary of State of (g) in paragraph 70: "Securing the execution of orders lawfully issued by the Governor-General"? That is part of the special responsibility of the Governor. I presume that in the case of an Act of the Federal Legislature, if a Province was recalcitrant as in the case which Sir Austen has put, the Governor-General would direct the Governor to carry out the law as it is laid down in

the Act and the Governor thereupon would use his special responsibility under paragraph 70 ?—No. I do not think in the general Federal field outside the special responsibilities of the Governor-General, the Governor-General could issue an order of that kind.

12,749. After all, the Governor-General would act by the advice of his Ministers in a matter of this kind. I suppose, in assenting to the Federal legislation, he would act by the advice of his Ministers ?—Yes.

12,750. Once he had done that, then surely it would be a lawful order of his to the Governor to carry it out ?—No—except in the field of his special responsibilities.

Lord Rankeillour.

12,751. Secretary of State, on that would not it be possible for the Central Government to carry out the contemplated orders arising out of Federal legislation and to charge the Province with the cost ?—There is no machinery for getting the money.

12,752. But the money for the Provinces comes through the Central Exchequer, does it not ?—Income Tax would.

Dr. B. R. Ambedkar.] I think the answer to Sir Austen Chamberlain's question may be given somewhat in this form : So far as the concurrent legislation is concerned, it is, I think, laid down in one of the paragraphs of the White Paper that any law in the concurrent field passed by the Federal Legislature will override a similar law passed by the Provincial Government. Consequently, if there was a conflict of law passed in the concurrent field between a law passed by the Centre and one passed by the Province, *ipso facto*, by the provisions of the White Paper itself the Federal law will have an overriding force as against the Provincial law.

Sir Austen Chamberlain.] That is so. That is the point that I put earlier to the Secretary of State.

Dr. B. R. Ambedkar.] That is I think the position so far as the legislation is concerned.

Sir Austen Chamberlain.] So I understand.

Dr. B. R. Ambedkar.] So far as administration is concerned, I think the position will be that the Federal Executive will have the authority to issue directions and instructions to the Provincial Government through the Provincial Governors with regard to the administration of a concurrent law passed by the Federal Legislature, and the Governors, I think, would be bound to obey them.

Marquess of Reading.] That is exactly the point upon which the Secretary of State has given an answer in the negative.

Sir Austen Chamberlain.] Yes, I put that to the Secretary of State. The Secretary of State's explanation differentiates between the case where the Federal Government has legislated in the sphere which is reserved to Federal authority. In that case, the Secretary of State says the intention of the Clauses we are discussing is that the Federal Government should have power to give directions for the execution of that law. I put it, if I may, to the Secretary of State again. In the case of legislation reserved to the Federal authority, the Federal Government may follow up its legislation by orders to the Provincial Governments and authorities to execute that law. In the case of legislation in the concurrent field, if the Federal Government does legislate, the Federal law overrides the Provincial law and is the only law of the Province or of India ; but, in that case, according to the Secretary of State, the Federal Government has no power to issue directions for the execution of its law or to secure that it is executed. On what ground can you justify that distinction between the administration and execution of two laws equally binding, passed by the same authority, one of which it may enforce and the other of which it may not enforce ?

Sir Manubhai N. Mehta.] I was going to strengthen this argument by reference to Section 127, which applies to the Indian States : "It will be the duty of the ruler of a State to secure that due effect is given within the territory of his State to every Act of the Federal Legislature which applies to that territory."

Marquess of Reading.] May I ask, my Lord Chairman, that we should not pass

from this very important point raised by Sir Austen to the States? We have got to come to that. I cannot help thinking that it will only confuse the matter. We do want to get this point clear.

*Chairman.*] Sir Manubhai Mehta, it might be well just to clear this matter up as regards the Federation and the Provinces of British India and then to relate the matter to the States afterwards.

*Sir Manubhai N. Mehta.*] Yes.

*Witness.*] My answer may sound to be rather an illogical one. I quite agree with Sir Austen. Legally and Constitutionally, there can be no distinction between one Federal Act and another—I accept that contention entirely. Yet, I do feel that politically it is worth distinguishing between the Federal field and the concurrent field. The existence of a concurrent field has occasioned a good deal of criticism amongst the adherents of Provincial autonomy, and if any action that we took went to give the impression that the concurrent field was really going to be a Federal field under another name, I think we should see a very general opposition to a proposal of that kind from large sections of public opinion in India. That makes me think that it is wiser to keep a distinction between the two fields, and to keep in mind the fact that for the purposes of administration the concurrent field is a Provincial field. It is our intention that the Federal Government should only come into the concurrent field when there is a general desire for uniformity over some field of legislation or administration. Having said that, I do not in the least wish to suggest that my mind is closed to suggestions of this kind. My advisers and I will gladly think over these points again.

*Sir Austen Chamberlain.*

12,753. I am very much obliged and I hope the Secretary of State will do so. My Questions all arise out of the modification which he has made in the Clause by the opening statement that he made to-day. If I might add just one more question: Would he in turning this matter over consider whether it can ever be wise to encourage an authority or give power and, therefore, encouragement to an authority to legislate with-

out giving that authority any power to enforce its legislation, and whether that must not have the result of bringing all law into disrepute?—Sir Austen raises a new point in his further question, the point as to whether there should be sanctions or not.

12,754. I do not say sanctions but power to enforce?—It comes to the same thing, does it not?

12,755. Do you call it sanctions in the Federal field? It is not punishment; it is merely authority?—Authority to give an order; it is no more than that.

12,756. Authority to give an order and to oblige the local authorities to execute the Federal law?—But you cannot oblige the units to execute an order if they refuse to. I hope they will not refuse but I myself cannot see what power you can apply to a Provincial Government.

12,757. I beg the Secretary of State to consider these answers very carefully at his leisure; but surely what he has just said amounts to saying that Section 125 is merely a piece of paper which is worthless for all practical purposes, even in the Federal sphere if a local authority chooses not to obey the directions of the Government?—No; I would not admit that comment at all upon my answer. Section 125 states the duties of the Federal Government and the duties of the Provincial Government under the Constitution. It is to be assumed that the Parties that enter the Federation will accept those duties. When, however, it comes to the power to enforce a decision then a series of very difficult questions arise and Sir Austen will find that in these proposals we are following very much upon the lines set in other Federations and so far as I know there is no sanction in any Federation except possibly the new German Reich to impose the will of one section of the Federation upon the other.

*Earl of Derby.*

12,758. The United States?—I do not think there is any power to do it. The United States, of course, have got their own agents for certain purposes, and I would hazard the opinion that it has been a very weak reed on which to depend in the case of the United States.

*Sir Austen Chamberlain.*

12,759. Have they not got Federal Courts, Federal Officers and Federal Forces, which have, on occasion, been used by the President in Washington to enforce the law in a particular State?—For carrying out exclusively Federal objects.

12,760. But if the Central Legislature has found it necessary to legislate, surely that is a central object?—It is not upon a Federal subject. Sir Austen seemed to me to imply that I was rather hair-splitting when I gave that last answer. I was not; it is a distinction.

*Sir Austen Chamberlain.*] I do not think the Secretary of State is hair-splitting but I think that his argument tends to destroy the whole value of the safeguard which he has offered to the Committee in relation to the purely Federal subject. That if his answers in regard to my questions in relation to legislation in the concurrent field are to be accepted, then the safeguards which he offers in the purely Federal field are worthless. I am sure he does not mean that. That is why I begged him to consider those answers very carefully.

*Lord Eustace Percy.*] May I ask the Secretary of State at the same time to consider another aspect of this question: Whether he is not in these proposals as they are at present before us making a much more serious attack on Provincial autonomy than he would be by accepting Sir Austen Chamberlain's suggestion, because if you give the Federation a power concurrently or otherwise to legislate on a subject you cannot constitutionally keep back the power from it of appointing agents to carry out that legislation; and in the instance given by Sir Austen Chamberlain, if a Provincial Executive refused to carry out or nullify by exemption the Federal law on hours of labour there would be one alternative before the Federation which would be in all its Acts in the concurrent field, to provide its own executive servants. That is not precluded by anything in the White Paper, and I think cannot be. The result would be that if it is important for India to have uniform legislation and administration of a particular subject, such Acts would

always contain special provision for a Federal Executive Service to carry them out, because otherwise under the Constitution the Federation will have no power to control their execution at all. May I add that I think is what the experience of the United States has been: Just because the Federation has no power to give directions to New York as to how its Preventive Officers are to carry out prohibition, they have had to provide Federal Officers of their own and the conflict between the Federal Officers and the State Officers has nullified the execution of the legislation.

*Earl Peel.*

12,761. I just wanted to ask one question, if I might. The Secretary of State stated very strongly that he thought that any power in this concurrent field given to the Federal Government to enforce a general law in the concurrent field would arouse a good deal of anxiety in certain Provinces, and would be construed as an attack upon Provincial autonomy. Now, I was going to question that point. Of course, the Federal Government would never initiate any legislation I presume on these concurrent fields of the nature that we have been discussing unless they had had a conference with the representatives of the Provinces and there was pretty well a general agreement that this legislation should be carried out. We were taking the case of a Province which did not agree. First of all, I say, the legislation would never be carried out unless there was a general agreement and if there was one Province which was so recalcitrant as to upset the whole balance, would it not be felt in that case by the other Provinces that really it was quite reasonable that the Federal Government should have a power of enforcing and would not raise the wide fear that the Secretary of State suggests, that there is a general attack intended upon the whole independence of Provincial autonomy?—That very well might be so in certain cases. The difficulty arises though with the big subjects like subjects 9 and 10 of List 3, Criminal Law and Procedure. With a field as wide as that the Federal Government might really undermine the whole basis of the administration of law and order in the Provinces.

12,762. The case which was taken by Sir Austen, I think, was some social legislation where a good deal of expenditure would be required. It is difficult to me to conceive that the Federal Government would really impose a law of that kind upon the Provinces unless there was very general agreement that that money should be spent in that way, and all the Federal Government would do would be to set its seal by its legislation in the concurrent field upon the general agreement in the Provinces?—It is because I want things to work out like that that I feel the less one talks about compulsion in the Provincial field, the more likely you are to get Provincial Governments to work together for uniformity.

12,763. I see, of course, the technical difficulty of Sir Austen's point—perhaps it is more than technical?—Sir Austen's ease, if I may say so, is an easy case, and it is difficult to dispute it. The much more difficult case is the case I have just mentioned, namely, criminal law and procedure.

Sir Akbar Hydari.

12,764. Would not what Lord Peel has said with regard to legislation of that kind by the Federal Government be ruled out by the provision in the second subparagraph of Proposal 114? "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." In most of this Labour legislation it would probably indirectly impose a financial obligation upon the Provinces and if there was any one Province which did not desire legislation on that subject it could very well appeal under the subparagraph and say that it should not be a subject for the concurrent field?—I think we have got to take the second paragraph of Proposal 114 into account. I would ask the attention of the Committee to that paragraph. I am inclined to think that upon further consideration we may find that the paragraph goes too far. For instance, in the case of International Labour Agreements, we may find upon further consideration that it goes too far, but even so, if it does go too far, I can see no way of compelling a Provincial Government to meet obligations

of this kind if it is determined not to meet those obligations; but, in making a refusal of that kind, the Provincial Government is repudiating the whole basis of the Federation and I am assuming that a Provincial Government will not repudiate the basis of the Federation.

Sir Akbar Hydari.] What I was trying to point out was that really that particular sub-paragraph imposes this obligation. That legislation in a concurrent field will be more a matter for the uniformity of legislation with the concurrence of all the Provinces. If there is any legislation of a kind which has not got the concurrence of a particular Province, then by that very fact it is not within the power of concurrent legislation, and, therefore, the difficulty which has been raised by Sir Austen Chamberlain will not arise. I am trying to point out that there is so much restriction imposed by this particular subparagraph in the power of the legislation of the concurrent field that it is more for uniformity of legislation that this has been provided for and that this uniformity of legislation could be only if all the Provinces agreed.

Lord Eustace Percy.

12,765. Does not that make all the more forcible the danger that I have alluded to: that a *fortiori* the Federal Government will always, where possible, provide its own service and pay it itself, and therefore will get round that Paragraph 114?—I would have thought that would not be the case. *Ex hypothesi*, the kind of cases that we have in mind are cases that will involve heavy expenditure.

12,766. Not limitation of hours of labour in factories?—No; that may perhaps be a case pointing the other way, but many of these other cases will be cases involving considerable expenditure, and I would have thought that the Federal Government would be most reluctant to undertake expenditure of that kind in the Provinces.

Marquess of Reading.] May I ask the Secretary of State one point arising from what he has said in order that we may have clearly in our minds how the position stands? Sir Austen Chamberlain has put the alternatives very clearly, but what I do not follow is what

is the position under the Constitution according to the answers that the Secretary of State gave, assuming that there is a concurrent field in which the Federal Government has passed legislation?—Provincial Government abstains or refuses to carry out that law. That is a very definite point which was put and which might happen. I understand the Secretary of State to say: "Well, it is provided that it must obey that law and that the Federal Legislation will prevail, and it is to be expected that the Provincial Government will carry out its duties." So far, speaking for myself I quite follow. Where I got into difficulty, and the reason I am putting this question to the Secretary of State is, assuming that the Province, for one reason or another, into which it is not necessary to enter at the moment, refuses to carry out the law—it may be wilfully; it might be out of pure desire to make a constitutional difficulty; you cannot leave out such considerations, in my opinion, when you are considering these safeguards; you must assume possibilities of that kind. Suppose that happens, or, even apart altogether from constitutional agitation, suppose that the Provincial Government refuses to do it.

Marquess of *Salisbury*.] Or merely neglects to do it.

Marquess of *Reading*.

12,767. Yes; I used the word which Lord *Salisbury* used—"abstains"—which I think is quite a good word for it. Assuming that to happen, are we to understand that under the constitution which we are now to recommend, whatever form it may take, that no power is to be given to the Federal Government to ensure that the Provincial Government should, in the case that we have put, carry out what is said to be the law of all India and prevailing over that particular Province? Are we to assume, as I do from what the Secretary of State says, that nothing can happen; that there is no means of enforcing it? Is that right?—Lord *Reading* is dealing, I understand, only with the concurrent field?

12,768. Yes, that is right?—My answer would be that in the concurrent field I can see no practicable method of coercion after looking at the experience of other Federations. This is not a new

problem. It is a problem that has been inherent, I think, in every Federation. The noble Marquess will find, I think, if he looks to the Constitution of the Dominion of Canada, so far as I remember, that there is no power of coercion.

12,769. I want to make one suggestion with regard to it. Is it not possible to legislate that the Governor shall have the power in that case? He has all the means of providing under the separate paragraphs that we have discussed. Is not it possible then for the Governor to have the power and, indeed, the duty if a position arises such as I have just described, to see that the Provincial Government does carry out the Federal law? He could do it either by means of his own Act, or he could do it by means of an ordinance, or he has means even of raising the money that is necessary under the powers that are given him. It is most remarkable, I agree, but is it not better that that should be the position than that we should leave the Constitution in this form, that there is no power in the Federal Government to see that the Provincial Government carries out what is declared to be the Federal law for all India, including that Province?—We can consider Lord *Reading's* proposals. They appear to me to go a long way. I do not turn them down on that account at all, but they would appear to me, at first sight, to bring the Governor-General acting on his own discretion into a field other than the field of his special responsibilities.

*Chairman*.] Before I call on Sir *Austen Chamberlain*, it occurs to me that it may be to the convenience of the Committee that we should have a round of questions this morning and that further consideration of these matters should be reserved until we have the discussions later on.

Sir *Austen Chamberlain*.] If I may put a question for the purpose of drawing the Secretary of State's attention to a particular aspect of the matter, which was just alluded to by him, without his seeing I think how serious it was, he gave an illustration of a case in which the Federal Government might wish to legislate in the concurrent field, an occasion when they were implementing an

obligation undertaken by an international convention, if the Federal Government has accepted an international convention imposing certain obligations on it.

Marquess of *Salisbury.*] Labour.

Sir *Austen Chamberlain.*

12,770. Take a Convention like the Opium Convention or a convention dealing with the manufacture or trade in arms. One could give other instances. If the Federal Government has accepted such a convention it will be no answer to the complaints of another nation aggrieved by its action that it has no power to enforce the convention within its own territory?—Sir Austen no doubt remembers that this is no new difficulty.

12,771. I remember very well the difficulties which have arisen in the international relations of America on this very ground, and that is why I venture to think that we should be wise to prevent that difficulty arising in the case of India?—Sir Austen I think, if I may say so without offence, is somewhat magnifying this difficulty. The kind of questions that I think he has in mind would I believe, in nine cases out of 10, be exclusively Federal questions. In that case the Federal Government have the power to give directions. For instance, in cases like opium and the traffic in arms, those are both Federal subjects. The power to give directions, therefore, really exists.

12,772. Is the manufacture of arms a Federal subject?—Traffic in arms. I am not sure at the moment about the manufacture of arms.

12,773. The growing of the poppy for opium?—Yes; we would include that in the traffic in opium.

Marquess of *Salisbury.*

12,774. Does not the Secretary of State agree that if it is impossible to enforce a law passed by the Federal Legislature in the concurrent field it must be equally impossible to enforce the law passed by the Legislature in its own field? Did not the Secretary of State say that there was no means of enforcing the law?—In the case of the great extent of the Federal field, the Federal Government will have its own agents.

12,775. For instance, the regulation of companies, the development of industries, all those are in the Federal field alone. If it cannot enforce the other labour legislation which is in List III, how can it enforce the labour legislation in List I?—In the Federal field it can have what agents it wishes, but in the provincial field the agents are Provincial agents.

Mr. *Morgan Jones.*

12,776. May I ask one question on the point which Sir Samuel Hoare has been putting, that there is no power to compel a province to co-operate with the rest. In paragraph 70: "In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of . . . (g) securing the execution of orders lawfully issued by the Governor-General." When the Governor-General attaches his signature to a law passed by the Central Legislature has that the effect of an order to the various Provinces?—No, paragraph 70 deals only with the field of special responsibilities.

Earl *Peel.*

12,777. I was going to ask this question of the Secretary of State: When you look at page 119 at the list of concurrent powers, they look very formidable indeed. They seem to suggest legislation of all kinds of expensive controversial subjects on which much money may be spent, but I am not quite sure how far all that is conditioned by paragraph 114 which says as regards this concurrent legislation it "is to secure the greater measure of uniformity which may be found practicable." That really suggests, to my mind at least, that it is not expected that the Central Government will deliberately go and legislate on a number of these subjects, but will only pass a law to get a measure of uniformity when you get general agreement because that is what the words "which may be found practicable" really mean, I think?—That is our intention.

12,778. And have we not been rather enlarging, as it were, the difficulties which may arise owing to this concurrent legislation and the necessities of enforcing all sorts of laws which really would not be passed at all?—I think we have.

The difficulty arises, however, with such subjects as Nos. 9 and 10, the Criminal Law and Procedure; subjects which, as Lord Peel knows, excite the greatest suspicion in the minds of large numbers of people in India as to where and how questions of that kind will be administered.

Archbishop of *Canterbury*.

12,779. I just wanted to say, Secretary of State, I confess it seems to me on the discussion that you cannot, as you admit, logically give power to the Governor to see that the Federal law is carried out in the exclusively Federal subjects, and deny ultimately some such power in the concurrent sphere where a Federal law has been passed, and which must overrule Provincial law, but, although I see that, I also see your point in regard to the concurrent sphere where Provincial officers are required, and where naturally provincial assent is of more importance. I merely suggest would it not be possible to make provision that no Federal law should be introduced in the concurrent sphere without providing that before it is brought in there should be a conference with the representatives of all the provinces concerned. That would acknowledge the special position in regard to any Federal law in the concurrent sphere, because I gather you do not contemplate that being brought in unless there is general agreement. If that general agreement is ensured by some such conference before any Federal law in that sphere is introduced surely there could be no objection then to secure that, if the Federal law is passed, then the powers of the Governor-General come in to see that it is enforced?—I would have thought that almost inevitably there would be that kind of consultation between the Federal Government and the representatives of the Provincial Governments. It would, however, appear to me at first sight to be difficult to put it actually into the Constitution Act.

Sir *Reginald Craddock*.

12,780. My Lord Chairman, may I put one question?—May I just finish. For instance, supposing one province in a conference of that kind held out against the others; I would rather myself not allow a veto of that kind to a single

province. I would rather the Federal legislation was passed, if all the Provinces except one required it, even though the single Province might hold out afterwards. I would prefer not to put a veto into the hands of a single Province.

Archbishop of *Canterbury*.

12,781. My point rather was that if in that case a single Province did object then there would be no such reflection on provincial autonomy if in that case the Governor-General was armed with all the powers in respect of this Federal law in the concurrent sphere as he possesses in regard to any law in the exclusively Federal sphere?—I think His Grace will see that it is very difficult to define the extent of Provincial opposition that would result in a veto proposal of that kind. It occurs to me offhand that you might have a Province holding out, but it might be the one Province that was chiefly affected by a particular proposal. That goes to show how difficult it is to define it in a Constitution Act.

Sir *Reginald Craddock*.

12,782. I just wanted to put one point to the Secretary of State. Although the Provincial Government itself might want to abstain from enforcing the Act, so far as the Courts, Civil and Criminal, are concerned, as the Federal law would prevail over the Provincial law in the law of the Constitution, those Courts would have to enforce the Federal law when the case came before them?—That is so.

Mr. *M. R. Jayaker*.

12,783. You have provided for one safeguard, I think, in paragraph 114, the last clause, against such legislation by the Federal Government as against the Provincial legislation on the same subject?—Yes.

Mr. *M. R. Jayaker*.] May I ask one more question?—Does your Lordship desire that I should keep back my questions till my turn comes?

Chairman.] I think it would be better that as soon as possible we should return to the normal method.

Mr. *M. R. Jayaker*.] If your Lordship pleases.



*Chairman.*

12,784. Secretary of State, would it be well, do you think, that I should invite Lord Salisbury now to continue over the whole range of these subjects, paragraphs 125 to 129, or would you refer that we should pay attention to the earlier paragraphs only?—I do not mind at all.

*Chairman.]* If my noble friend will allow me, I would suggest that he should ask questions over the whole range.

*Marquess of Salisbury.*

12,785. If that is the wish of the Committee, then I perhaps ought to take the second sub-paragraph of paragraph 125, as we are upon that paragraph. There it is quite clear that in the realm of Law and Order the Governor-General is able to give an absolute order to the Governor?—I think Lord Salisbury is dealing with paragraph 126, is he not?

12,786. "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." You are perfectly right, it is my mistake. I apologise; it is 126 and not 125. There, there is no question that the Governor-General can give an absolute order in his discretion to the Governor as to all matters which may be said to involve a grave menace to the peace and tranquillity of India or any part thereof?—Yes.

12,787. Therefore, in that field, the field which we know as law and order, at any rate in extreme cases the Governor-General has absolute power to give an order?—Yes.

12,788. And in that case the Governor would be under obligation to carry it out?—Yes.

12,789. And he would in that case use his special responsibility for the purpose?—Yes.

12,790. It is not like the last discussion where there was no question of special responsibility. In this case, there is?—Yes.

12,791. It follows then, does it not, that in the case of great disorder, the Governor-General would be really respon-

sible in the last analysis for public safety?—Yes; that would be so.

12,792. And therefore all the difficulties to which we I am afraid have rather repeatedly called your attention, of Parliamentary pressure which might be put upon the Governor-General, I mean the pressure from the Central Legislature which might be put upon the Governor-General would apply. I do not think, Secretary of State, you admitted the difficulties, but the difficulties we suggested to you would apply?—Yes; always remembering that the Governor-General will have, no doubt, advice from the Federal Centre, but he will also have advice from the Governors in the Provinces.

12,793. No doubt he would have advice, but things might be made very difficult for him by the action of the Central Legislature and the responsible Central Government?—I do not see why they should be.

12,794. I do not say they necessarily would be; I do not want to over-state the case at all; but, in a case where public feeling was very much excited, let us say some communal difficulty—I dislike using the word "communal" because I do not want to import any heat into the discussion whatever and I know what susceptibilities are aroused by those words—but just as an example some communal difficulty might arise. The communal majority in the Central Legislature would be excited and would put pressure through the Ministers upon the Governor-General to exercise his authority in the Provinces, or to abstain from exercising his authority in the Provinces?—I suppose that might happen, but I still think that it would not deflect the Governor-General from the course that he thought he ought to take. The pressure may come in one direction, on the one hand; it may come in the other direction from the Province, or it may come as a third alternative from Parliament and the Secretary of State here.

*Marquess of Salisbury.]* I am quite satisfied to call the attention of the Committee to the point.

*Archbishop of Canterbury.*

12,795. Will you allow me just to ask a supplementary question which might

clear the discussion ? It is a question of definition. Is there any difference between the use of the word "directions" in the first part of paragraph 125 and the word "instructions" in paragraph 126 ?—There is only this small difference. In substance, there is no difference. We have as a rule in the phraseology of the relations between the Governor-General and the Governors tended to use the word "instructions," but there is no difference in substance.

12,796. But "instructions" as a rule in the rest of the White Paper means instructions for dealing with matters generally, whereas "directions" as used in regard to any particular matter. It is not presumed in 126 that that refers merely to instructions of a general kind, but rather to directions for a particular case ?—We can make that point clear ; it may be necessary to make it clearer.

Archbishop of *Canterbury*.] Thank you, Lord Salisbury ; I beg your pardon.

Marquess of *Salisbury*.

12,797. Not in the least. Then I have nothing more to suggest on paragraph 126, but I go to paragraph 127. Now, the first point which seems to be necessary to clear up is what will be the situation with respect to the States which do not join the Federation ?—They do not come directly under the Section. If the Secretary of State thinks this is an improper question, I hope he will stop me. I presume the Political Department in India will continue to exist irrespective of the States who do not join the Federation ?—The Political Department will continue to exist for all purposes, both for the relations with the States that do not join the Federation and for the relations with the States that do join the Federation in the field of paramountcy.

12,798. Will there be a special Minister for that purpose—a part of the staff of the Governor-General ?—There will not be a special Minister for the reason that paramountcy is kept outside the Constitution altogether. The Governor-General will, however, have what staff he requires for dealing with this kind of work, much of which is now dealt with by the Political Department.

12,799. He will have a staff for that purpose only—a paramountcy staff, as it were ?—As Viceroy, yes.

12,800. That will operate not merely in the case of the States which do not join the Federation, but all the paramountcy points of the States which do ?—Yes.

12,801. And in the case of the States which join upon a different basis—because of course they will not all join exactly on the same basis, will they ?—Yes and No. They will accept the basic conditions of the Federation, but I can conceive that within those basic conditions there will be variations of the way in which the particular subject might be applied.

12,802. Supposing in a particular case a particular State does not accept the jurisdiction of the Federation in a particular Department, the old Political Department of the Government of India will deal with that State, even though it is in the Federation ?—It would go on just as it is now.

12,803. All the paramountcy points would go on ?—Yes.

12,804. I shall, of course, be very brief in my questions. The Secretary of State will see that a great deal of the previous points raised in the Committee this morning have to be repeated and have to be borne in mind in respect of the States. There will be certain Federal laws which will apply to all the units of the Federation, will there not ?—Yes.

12,805. How will the questions be put ? How will the Federal Ministers, the Federal Government, enforce its authority in respect of Federal laws which apply to the States ?—May I just say that I hope the representatives of the States will realise that in putting these things in their crude form I do not intend to be in the least disrespectful. It is only to be quite clear ?—Either the Federal Agents in the event of there being Federal agents in the States, or if not Federal agents, the States' agents for themselves.

12,806. Will there be Federal agents in the States ?—Yes ; there might be.

12,807. But will there be ?—It depends upon the Treaties of Accession.

12,808. But has the Secretary of State not contemplated that in certain cases

there must be Federal agents in the States ? For instance, there is a certain assessment law which must be enforced in the States. I think we had it from Sir Akbar Hydari that in a case of emergency there would be a contribution from the States upon a prescribed basis—I think that was the phrase which he used. Who will see in that case that the prescribed basis is obeyed ?—We have contemplated that there will be Federal agents for certain purposes. For instance, I imagine there will be Federal agents for posts and telegraphs. It is, however, possible that in certain States for certain of the Federal subjects the Federal Government may rely upon the administration of the States. For instance, with customs : When it comes to the assessment of the States' contribution in times of emergency, there, I think we have not contemplated that the agency of collection should be a Federal agency, but that we should rely upon the States to produce the sum of money ; so that although the basis might be prescribed, I presume by the Constitution Law there would be no means of enforcing it, seeing that the prescribed law was duly followed.

*Marquess of Zetland.*

12,809. Is it not covered by paragraph 125 and 127 ?—Yes. If Lord Salisbury will look at 129, he will see there "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled."

*Marquess of Salisbury.*

12,810. So that what is contemplated is merely instructions, but there are no means of seeing that the instructions are fulfilled ?—There is always the ultimate power in the field of paramountcy.

12,811. Would there be power in paramountcy to see that the instructions were fulfilled ?—Yes.

12,812. And would that apply to Federal legislation applying to the States—for instance, the regulation of companies, which belongs to List I ?—Yes ;

in theory it would. Lord Salisbury will, of course, remember that the Federal Government will be composed of representatives both of the States and of British India ?

12,813. But I am assuming that a law has been passed in the Federal Legislature by a Majority ; it might include a majority of the States or it might not, one does not know, but a law is passed in the Federal Legislature applying to the regulation of companies or the development of industries. Both of those belong to List I of Appendix 6 ; those apply, therefore, to the States (Members of the Federation, of course) as they do to the Provinces ?—Yes.

12,814. Now I want you to tell the Committee, if you will be so very kind, as to how a law of that kind is going to be enforced ?—It would be the law of the State. The State would have surrendered that part of its sovereignty and the law would be a valid law in the State.

12,815. There would be no sanction ?—No ; there would be no sanction. I am not contemplating that the Federal Government should march an army into a State to enforce a law.

12,816. I certainly do not think that, but I wondered how the Secretary of State contemplated that this Federation will work ?—I contemplate both the States and the Provinces carrying out what is the competent law of the land.

12,817. I do not think the Committee would wish me to pursue it further because it is quite evident that I shall only cover very much the same ground that has already been covered, but, if I may respectfully say so, when the Secretary of State comes to consider all that has passed this morning, all the difficulties apply to the States just the same as they apply to the Provinces ?—Certainly.

*Archbishop of Canterbury.*

12,818. May I add to that, when you were asked previously by Mr. Zafrulla Khan as to what would happen in the case of a default by a State Member of the Federation, you said that in the case of one default, to say nothing of a series of defaults, the Viceroy would

have the power of intervening under his power of paramountcy?—Yes.

12,819. What precisely would these powers of paramountcy in such a case involve?—It is impossible to say, and can anybody suggest what they would involve?

Marquess of *Reading*.

12,820. The mere fact of there being paramountcy puts great pressure upon any representation that may be made by the Viceroy?—Certainly.

12,821. And consequently it does not become necessary to do anything more?—That is so.

Archbishop of *Canterbury*.

12,822. I have already asked very many questions. With regard to paragraph 128, Secretary of State, where you say, "it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself that an adequate standard of administration be maintained," the word "inspection" seems to imply that there will be some Federal officer of that kind in the region of the State Member to carry out such duties of inspection?—It does.

Marquess of *Reading*.

12,823. Secretary of State, first of all, I want to say with reference to the suggestion I made to you earlier following upon Sir Austen Chamberlain's questions, I hope you will not take it that I have definitely made up my mind on a question of that kind; all I am wanted to do was to put it to you for consideration. I do see the difficulties, but I am anxious that something should be found to meet them?—I am very much obliged to Members of the Committee for raising these doubts; there are doubts which we must take into account.

12,824. May I just put this to you in relation to what you have just said regarding the States. Of course, one knows in regard to the States that the Viceroy because of the relations between the States and himself as the representative of the King, really has very little difficulty, and the States are always ready

to fall in with what comes from him; but, as I understand from what you have said just now, there is a power in the Viceroy to enforce, if it became necessary, by resort to the Doctrine of Paramountcy. It is not necessary to particularise, as you pointed out. That does follow as a matter of course, does it not?—Yes. That is so.

12,825. What I mean by that is that if the Governor-General or Viceroy issues letters of instructions or directions, which ever you may choose to call them, to a State to carry out what it is the obvious duty and obligation of the State to perform, the State will either do it or it becomes in default and then there are various means of putting pressure upon the Ruling Prince and his government which would bring about what you desire. There is no difficulty in that?—That is so; yes.

12,826. The point I wanted to put to you on this (I do not want to particularize any more than you have done) was this, that that does seem to indicate that in relation to the States, should such a thing happen, failing to perform any obligation undertaken, there is something in the nature of a power to enforce the obligation. That already exists, as I understand, by the position as between the Viceroy and the States?—Yes, a moral obligation.

12,827. It is, of course, a different obligation from that arising between the Federal Government and the Provincial Government. The one is purely constitutional between the Federal Government and the Provincial Government and depends entirely on what is in the Constitution, does it not?—Yes, and in drawing the distinction Lord Reading no doubt will remember this fact which has some bearing on his point, that in the case of the States there is no concurrent field at all. The difficulties we were discussing earlier this morning were not connected so much with the Federal field as with the concurrent field.

12,828. I agree as to a large part of it, but, forgive me, not exclusively. Of course, I understood the answer which was made to one part of Sir Austen's question was that, apart from special responsibility, there was no sanction pro-

vided even apart from the concurrent field?—I think I would still say that the sanction in both cases is in the nature of a moral sanction.

12,829. I was only directing attention really to this for the purpose of giving consideration to it, if you think that it still requires it, as I venture to suggest to you it does?—Yes.

12,830. In the relations between the Federal Government and the States, backed as they are by the prerogative powers of the Viceroy and also the reserved powers of the Viceroy with the States, there is a very definite relation which enables the Viceroy to obtain performance of any obligation which is imposed by him or the Federal Government upon the State?—Yes.

12,831. That is clear. I wanted to make it quite clear. I want to draw your attention, Secretary of State, to this: That is exactly what you fail to have in your relations between the Federal Government and the Provincial Government, because I have pointed out, and you agree, the reason why no doubt there is a difference between the two positions?—Yes.

12,832. But there is this as between the Federal Government and the Provincial Government: There is not that power to enforce an obligation, and it is exactly in respect of that that some of the questions were put to you this morning for your consideration?—Yes; I will certainly take them into account, always remembering, as I say, that there is this difference between the two cases, namely, that in the case of British India there is the concurrent field and in the case of the States there is not a concurrent field.

12,833. Yes, but it does introduce the same principle?—I agree.

12,834. Although it is much more difficult to deal with it in a specific form in relation to a concurrent Act than there is in the other. May I make one last suggestion in regard to that—I do not want an answer to it; I will only just ask that it may be considered?—Yes.

12,835. Is it not possible to have, in relation to the Provincial Government and to the obligations which it must

perform because of Federal legislation, some general provision of the character in Proposal 129, making allowance, of course, *mutatis mutandis* because there are different provisions? I do not want to press it and I do not ask for an answer. I just ask that you would consider it?—Yes.

12,836. I can see myself there is a very great advantage in having some general provision which would enable the Federal Government to give the order and perhaps also to provide means of carrying it out without being too specific. That might involve a little difficulty?—Yes. I will take into account Lord Reading's suggestion.

12,837. The only other point I wanted to ask a question about is in relation to the carrying out of Federal Legislation in the States. I am dealing, of course, with a State which has acceded by its treaty to the Federal Constitution. Suppose the State is not carrying out its obligation, there would be power, as I understood from what you have said and also from what has appeared before, in Federal Agents inspecting and reporting?—Under No. 128 we make provision for that purpose.

12,838. But is there any power in the Federal Agent actually to execute the Act; is there only the power of reporting? That is what I wanted to know. It is one thing to say that he shall inspect and then report to the Federal Government or to the Governor-General. That I follow is already here, but suppose something is not being carried out that ought to be carried out, is there to be power in the Federal Agent to do it if the State does not itself comply with the instructions?—There is no provision included in these proposals. We have assumed that a question of that kind might be raised in the Instruments of Accession. It might well be that in the Instruments of Accession the States and the Crown could agree upon a certain method of procedure, but we have assumed that that was more the place for a definition of that kind than the Constitution Act.

12,839. And also I suppose you would take into account that you have the power under Proposal 129 which would enable you to deal with it and also the paramountcy?—Paramountcy and also

whatever might be included in the Instruments of Accession.

12,840. Certainly, and that would make really complete provision. That is all I was anxious to see; that there was complete provision to deal with such a case as might happen, without having anything in the Constitution such as empowering the Federal Agents to go forward and do the acts themselves. For myself, what you have pointed out, Secretary of State, really does give the power to carry out all the Federal obligations without that?—You see, Lord Reading, in all these cases, both concerning British India and the States, we have always got to remember that the agency upon which we must rely is mainly a local agency, namely, the police and the courts of the Provinces and the police and the courts of States.

Marquess of Reading.] Yes, I agree to that. I was only putting it to you because something had indicated during the course of the discussion that this would be raised and I was anxious to see that I had understood that there are various means of dealing with it which makes it unnecessary to give the power to the Federal Agent to go forward into the State to do the act. That is all I want to ask.

Archbishop of Canterbury.

12,841. Adding to that again a small point, Proposal 129, to which Lord Reading has referred, speaks specifically of general instructions, again seeming to imply that that does not deal with particular cases, and I suggest again that that wants looking into?—Yes, we will look into it.

Marquess of Reading.] The word "General" may have to be taken out.

Archbishop of Canterbury.] Yes.

Mr. Isaac Foot.

12,842. I only want to put one question, my Lord Chairman, that is having regard to an answer that has already been made by the Secretary of State. He spoke of federations elsewhere. Have we any experience within or without the Empire as to the power of the Federal Government, in dealing with its constituent elements, upon which these paragraphs have been based, or are the

circumstances so different that we have to contrive an entirely new Constitution?—Upon the whole, the circumstances are so different that it is very difficult to apply to India a constitution that is applicable to any other part of the Empire. At the same time, in our consideration of the problem, certain general features have emerged: for instance, the difficulty of sanctions if a unit of a Federation refuses to carry out the decision of the Federation; but, speaking generally, Mr. Foot is right in suggesting in his question that the conditions in India are peculiar to India.

12,843. Therefore there is nothing in the history of the Empire that gives us any particular guidance upon this difficult question that has been raised to-day?—There are certain general landmarks that one can take into account. One cannot go farther.

Marquess of Zetland.

12,844. Secretary of State, does it not follow from the distinction which you draw from Federal Legislation in the purely Federal field and Federal Legislation in the concurrent field, that all Federal Legislation in the concurrent field will necessarily be only permissive?—No, it will have the valid strength of any law; it will be the competent law; it will not be permissive.

12,845. But, in actual fact, if you say that you do not propose to give the Federal Authority any right to issue orders to the Provincial Government to carry out the Federal law in the concurrent field, it seems to me that in actual fact it will amount to that that the Federal Legislation in the concurrent field will only be permissive?—No; the Provincial Courts will accept it as the valid law.

12,846. If that is so, I am bound to say I cannot see why any distinction should be drawn between the two categories of Federal Legislation. It seems to me very illogical. I should have thought they must have been on the same footing?—I do not think I have anything to add to what I have said earlier on that point this morning.

Lord Rankeillour.

12,847. Secretary of State, may I go back for a moment to the second part

of No. 125 : "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." May not the Provincial Government's executive power and authority be exercised so as to affect the administration of a reserved subject under No. 11 ?—Yes ; then the Viceroy can intervene under his special responsibilities.

12,848. But, short of his intervention under his special responsibilities, there is no provision for checking the administration of the Provincial Government as affecting a reserved subject ?—Yes, it is exactly the same. The Reserved Departments are Federal subjects, but they are Federal subjects within the exclusive competence of the Governor-General.

12,849. They are Federal subjects ?—They are Federal subjects.

12,850. Therefore, the machinery, whatever it is, is the same ?—The machinery is the same.

12,851. How would this work out ? Let us take external affairs. Supposing a Provincial Government had imprisoned some foreign seamen, or foreigners of any kind, not British subjects, and they claimed that it was an illegal arrest and correspondence arose with the foreign Government, would the Governor-General be able to issue directions to the Provincial Government to treat them differently, to release them, or whatever it might be ?—Yes, if it came within the Reserved Department of External Affairs.

12,852. Because it was a Federal subject ?—Because it was a Federal subject.

12,853. Then "Federal" covers "reserved" all the way through ?—Yes, the whole way through the White Paper.

12,854. Is that clear from the text of the sections of the document, or is it intentional ?—It is intentional and I would have said it was as clear as anything could be made. I have stated it several times in this Committee that Reserved subjects are Federal subjects, but they are reserved within the exclusive competence of the Governor-General.

Mr. Zafrulla Khan.] If Lord Rankeillour will look on page 113, the exclusively

Federal list, he will find all the Reserved subjects are included in the list.

Lord Rankeillour.

12,855. I wanted to get that clear ?—Lord Rankeillour will see it further defined in List I of the Appendix.

12,856. I come to another point. With regard to sanctions, I think you said that over a great part of the Federal field the Federal Government would have its own officers ?—Yes.

12,857. But in another great part it will not have its own officers. Do I gather that in the case of a really recalcitrant Government in a matter where the Federal Government had not got its own officers in a Province you do not see your way to insert any definite sanctions with reference to the carrying out of the legislation of the Federal Government ?—As at present advised, I think it would be much wiser not to insert any definite sanctions. There is nothing to prevent the Federal Government having its agents wherever it likes in the purely Federal field.

12,858. That is to say, like the United States Government in regard to Prohibition ?—Yes, and judging from the experience of the United States the result is not very hopeful.

12,859. You have nothing further than that to suggest ?—No.

12,860. Just one word with regard to the States : Within the provisions of the Federal Constitution there are really no sanctions at all ; within the limits of the Federal Constitution for enforcing the Federal policy in the States, that is to say, the Governor-General would have to go to the Viceroy, and the Federal law could only be enforced by the sanctions of paramountcy in the case of absolute recalcitrance ?—In the last resort that would be so.

Sir Reginald Craddock.

12,861. Secretary of State, one aspect of the position which has not yet been touched upon, but which from practical experience I know occurs, is where two Provincial Governments are at variance upon some point. Hitherto a reference to the Government of India under the existing system would always be possible if such disputes were of considerable

importance ; but will that method now be available, of reference to the Federal Government in such cases ?—Sir Reginald Craddock has raised an important point that is not covered explicitly in the White Paper proposals. I think somewhere we must deal with it. There must be some kind of means of settling disputes between Provinces, some kind, say, of arbitral machinery for settling disputes of that kind. The cases that are particularly in mind are the cases connected with water in which more than one Province may be interested, and indeed Indian States as well, and we are at present in consultation with the Government of India and with my advisers upon that point, but I certainly agree that somewhere there must be machinery for settling disputes of that kind, other than, as I am reminded, the machinery covered by No. 155, namely, the Federal Court.

Mr. M. R. Jayaker.

12,862. May I draw your attention to paragraph 161, in regard to the Federal Court : "The Governor-General will be empowered, in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it." Do you think it is possible to refer such questions under this Section with a slight modification of the terms of that section ?—I think there are some cases that are scarcely justiciable. If there are cases of that kind, and I think we shall find there are cases of that kind—

12,863. What I am suggesting is that the terms of this Section might be slightly modified so as to include cases which are not strictly justiciable ?—I think that might be so.

Marquess of Salisbury.

12,864. They only deal with justiciable matters ?—Yes. I am not quite sure whether the best way to deal with it would be to alter that paragraph. That paragraph deals explicitly with the Federal Court. I have in mind cases that are not strictly justiciable and for which some kind of arbitral tribunal might be more suitable than the Federal Court.

Mr. Zafrulla Khan.] If I might intervene, Secretary of State, what is a justiciable matter within the meaning of this paragraph ? I have never been able to find a definition of a justiciable matter. I think it would be better if you made it rather general, and did not confine it to what is justiciable.

Marquess of Reading.] It would take a long time to lay it down.

Archbishop of Canterbury.] May I call the attention of the Secretary of State on this very matter to his answer to Question 8678, put by Sir Akbar Hydari : "Would it not be preferable to omit the word 'justiciable' as the matter must be, without this word, of such a nature that it is expedient to obtain the opinion of the Court upon it ?" and the Secretary of State said, "I must certainly consider the suggestion."

Sir Austen Chamberlain.

12,865. The Secretary of State, I understand, considers that there are certain questions which can be determined by rule of law and which are, therefore, eminently proper for a Court of Law, but there may be other issues to which no rule of law applies, or the only rule of law you could apply would produce impossible results, and it is for those cases that you suggested something in the nature of an arbitral or conciliation tribunal ?—Yes.

12,866. A question like the disposal of the water of a river passing through several Provinces where vital injury might be done to a Province lower down the river by action taken in the upper courses of the river ?—Yes ; just that kind of case, a case in which there is a great body of past experience that must be taken into account, but that, not being case-law, might not be taken into account by a purely legal tribunal.

Sir Reginald Craddock.

12,867. If I might put some practical illustrations to the Secretary of State : For example, my old Province, the Central Provinces, were hemmed in by States on the North and on the South and South-West, and there were certain obligations which the Provinces and the States gave mutual effect to. They are



important in one way and though it would be difficult to call them justiciable. For example, it is understood that when the Police of a Province are pursuing a murderer or a dacoit, so long as they are in hot pursuit they may arrest him over the borders of the State, but they must thereupon promptly hand him over to the Police of the State for custody until such times as extradition can be arranged. In a matter like that supposing that they are interfered with by the State Police, or the State Police refuse to take over the custody of such a person, how would a case like that be dealt with? At present the Province concerned would not address the Durbar of the State direct. It would go to the political officer in whose area the State was situate, if they had complaints of that kind to make?—I think what would happen would be that in the first instance there would be consultation between the Ministers concerned, namely, the Ministers of the Provinces and the Ministers of the State involved. If nothing resulted from the consultation and there was a grave menace as a result, then there would be the power of intervention under paragraph 126. I ought to amplify my answer and say that, as far as British India is concerned, there would be the power of intervention under paragraph 126, and in the case of States there would be the power of intervention under the general power of paramountcy.

12,868. I would just like to give one more instance of the arrangements that were made under Excise. That was an understanding that the bordering States and the Province should keep a shopless zone for liquor three miles of the border on either side, the reason being that if liquor were cheap in the native States all the people from the British territory who wanted liquor would flock into that shop, and, with mutual arrangements, it was very seldom that liquor was cheaper in the Province than it was in the State, but the obligation was mutual—a three mile shopless zone. If that is broken by a shop being planted just on the border and the whole of the Excise Revenue from that locality is diverted to the State, in that case again would there be any power of reference if the State did nothing, if it was asked?

—The state of affairs would be very much what it is now, namely, that those questions are settled by negotiation by the political officers, and I presume they would be equally so settled in the future. There is no power of further coercion in these Proposals, nor is there any means of coercing now.

12,869. There may not be on paper, but, if a State is very recalcitrant, the influence of the political agent might be brought to bear upon it, but do I understand the Secretary of State to imply that in future correspondence will be carried on direct between the Provincial Government and the Provincial Ministers and the State Ministers, and that the practice at present in force will continue, whereby Provinces put their grievances, if they have any, against the State through the political agents or the A. G. G.?—I should like to think over the detailed procedure, but my own view would be that if you want to have co-operation you had better start with direct talks between the Ministers concerned.

12,870. Because ordinarily, the local officials have friendly understandings with the officials across the border. It was the case in my experience with Burma, and even with Siam, which is a foreign power, but nevertheless, cases of friction must arise sometimes, and I was very anxious to know exactly how under the New Constitution those cases would be met. I am much obliged to the Secretary of State?—The Ministers, of course, could always appeal to the Provincial Governor and the Provincial Governor could appeal to the Governor-General in a really serious case to bring his influence to bear upon the recalcitrant State.

12,871. But I think you said that you contemplated some provision for arbitration for such cases?—In the kind of cases I mentioned just now.

*Miss Pickford.*

12,872. I want to ask one question which I think was not completely covered by Mr. Foot's question. Is there not any experience in the Constitutional law and practice of the Dominions of Canada, Australia or South Africa, with regard to international labour conventions which

would aid us in this matter? These conventions are discussed by Delegates of the Federal Government and are ratified by the Federal Government, but, of course, are observed and enforced in the units. Have there not been questions between the units and the Federal Government which would aid us in this matter?—The experience goes to show how very difficult it is to force a unit in a Federal Government to do what it does not intend to do.

12,873. Have these questions arisen over international labour conventions?—Yes.

12,874. And, therefore, the ratification has failed now owing to the refusal of a State to enforce it?—I think that has actually happened in the case of the Dominion of Canada.

12,875. And no satisfactory way out has been found?—No.

*Marquess of Reading.*

12,876. Do I understand you to say that ratification failed because of that, Secretary of State?—So I understand. (Sir Findlater Stewart.) In ratifying the authorities explained that their ratification did not extend to the Provinces of Canada. The same thing happens in India. When we ratify one of these things, we have to explain that the ratification does not extend to the Indian States. Ratification on behalf of India or Canada, as the case may be, is a qualified one.

*Marquess of Salisbury.*

12,877. So that henceforth the ratification would not extend to any of the Provinces but only to the Central Government?—That depends upon what you say here.

*Marquess of Reading.*

12,878. Nowadays, if the Government of India ratifies, as, for example, it did the Eight Hours Convention, that applies throughout all the Provinces?—Throughout all the Provinces.

12,879. But that would not be changed by anything that is to happen now, would it?—(Sir Samuel Hoare.) No. I think that Miss Pickford's point was a rather different point, was it not, as to

what is to happen if a State refuses to carry out a part of the International obligation, and there our experience goes to show that it is very difficult to use coercion.

12,880. The point I was going to make was that it did not affect the ratification which has already taken place; what it does affect is the carrying out of the obligation?—Yes.

*Sir Austen Chamberlain.*

12,881. Then if it does not affect the ratification it does not affect the rights of the other parties to the Treaty under the Treaty and the ratifying government, which would be the Federal Government, might be taken before the High Court at the Hague and condemned to damages for the failure of the Provincial Government to carry out its obligations?—I do not know whether that is so or not, but the fact remains that that is the actual state of affairs with Canada to-day.

*Lord Rankeillour.*

12,882. Would the ratification come under the domain of external affairs reserved to the Governor-General?—If Lord Rankeillour will look at List J, he will see the definition of "external affairs"; it is on page 114, item 8.

Mr. Zafrulla Khan.] I think that gets over the difficulty. If it is a matter relating to a Federal subject, then, the Federal Government having ratified, can enforce it of its own accord; if it is a matter which relates to a non-Federal subject, it cannot ratify it unless it obtains the concurrence of the units, in which case it will be binding upon the units also.

Sir Austen Chamberlain.] And if it relates to a subject in the concurrent sphere, would Mr. Zafrulla Khan cover that contingency also?

Mr. Zafrulla Khan.] As a matter of fact the concurrent sphere is a sphere of Provincial subjects, not exclusively, but a certain group of Provincial subjects in respect of which uniformity has been considered desirable, and therefore power has been given to the Federal legislature to legislate also. Therefore, they are

non-Federal subjects. Being non-Federal subjects, the Federal Government will not be able to ratify unless it obtains the concurrence of the units.

*Sir Austen Chamberlain.*] Then it can legislate to make a law, but it cannot negotiate a treaty.

*Mr. Zafrulla Khan.*] It cannot ratify a treaty unless it obtains the concurrence of the units, being non-Federal subjects.

*Sir Austen Chamberlain.*] I do not agree.

*Mr. Zafrulla Khan.*] Clearly Item 8 on page 114 says: "including international obligations, subject to previous concurrence of the units as regards non-Federal subjects", because even with regard to the concurrent subjects, *Sir Austen Chamberlain* will see at page 68, paragraph 114, that "the Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces". And the object of this proviso in Item 8 at page 114 is that before the Federal Government ratified an International Convention that might apply to non-Federal subjects, it should obtain the concurrence of the units for the reason that the carrying out of the convention might involve expense, and if it involves expense then their concurrence must be obtained; otherwise they would not provide the money.

*Sir Austen Chamberlain.*

12,883. Would the Secretary of State consider and let us know the opinion of his advisers as to whether a concurrent subject, if it becomes the subject matter of Federal legislation, is for these purposes a Federal subject, or a concurrent subject, or is governed by the principles applying to Federal subjects after it has become a matter of Federal legislation, or is still governed by the proviso requiring the assent of the units?—I will consider the question in detail. My immediate answer would be that it is a Federal subject if it falls into the sphere of international obligations under Section 8, page 114. That being so, the Federal Government could give directions.

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*Lord Eustace Percy.*

12,884. On that last point, Secretary of State, may I just suggest to you that you are in danger here of being up against quite a different difficulty from the difficulty of Canada and Australia. You may be able in ratifying a treaty to reserve the consent, of your units, as Canada does, because it may be a Federal subject, and therefore you may ratify on behalf of the whole of India, but you may be utterly unable to see that administratively the agreement is actually carried out?—I think that is a difficulty.

12,885. I just want to put to you the point that it is different from the other Dominions in this matter?—Yes.

12,886. But the only specific question I want to ask is a new one on Proposal 126. I see that the power of the Governor-General in his discretion to issue instructions is limited to any grave menace to the peace and tranquility of India. What happens to his other special responsibilities?—His other special responsibilities are set out in the earlier clause.

12,887. In clause 18?—Yes.

12,888. Has he no power to issue instructions to the Governor about the safeguarding of legitimate interest of minorities?—Yes, certainly.

12,889. Then the fact that this is confined only to the first of his special responsibilities is not deliberate; it is not intended?—No; it was thought necessary for various more or less technical reasons to have paragraph 126 in addition to paragraph 18. Paragraph 126 is necessary, because there are certain cases that might not be covered under paragraph 18, that is the sole reason; but it in no way detracts from his power to intervene in the whole field of his other special responsibilities.

12,890. May I just add one question: In replying to Lord Rankeillour you said that the Federal Government would have power to appoint its own agents in the Provinces to carry out legislation in the exclusively Federal sphere. But, is it not the fact that there is nothing in the White Paper to prevent it appointing its own agents for carrying out the Federal law in the concurrent field?—I am not

sure whether there is, or whether there is not, but the way paragraph 125 was drafted was meant to imply that there was a difference between the treatment of the two fields.

*Lord Eustace Percy.*] Yes, I quite realise that, but I just wanted to get the point clear.

*Mr. Cocks.*] We are not debarred, I take it, from asking a question on this matter of concurrent subjects which was discussed earlier on ?

*Chairman.*] I must leave it to the discretion of the Honourable Member.

*Mr. Cocks.*

12,891. Suppose we have such a case as has been suggested of the Federal Government passing an 8-hour Act ?—Yes.

12,892. One of the Provinces refuses to administer it, and the factories, therefore, in that Province work say ten hours. Is it not then possible for the Federal Minister to bring an action in the Courts against the particular factory owner who is breaking the Federal law ?—Yes, not only the Government, but any individual could do so.

12,893. Would that action be brought in the Provincial Court ?—Yes.

12,894. The Provincial Court would carry out the Federal Act in that case ?—Yes.

*Mr. Cocks.*] That is all I wanted to ask.

*Lord Hutchison of Montrose.*] Do I take it we are asking questions now on the whole range up to paragraph 129 ?

*Chairman.*] That is so.

*Lord Hutchison of Montrose.*

12,895. Under paragraph 127 I know negotiations have been going on with the Princes. Has the Secretary of State any information to give the Committee as to what particular parts of the Federal legislation would apply to the Princes states ?—We have got the lists of the three classes of subjects. It is impossible to give a final or definite answer to Lord Hutchison's question until we have got the Treaties of Accession.

12,896. Then I understand from the Secretary of State's answer that up to

the present no agreements have been entered into with any of the Princes ?—You could not enter into any agreements it seems to me with any of the Princes until the Constitution Act is, if not passed, at any rate nearly passed. You could not enter into any agreement with the Princes, for instance until this Committee has reported and the Government has taken its decisions about what are the contents of these various lists.

*Earl of Lytton.*

12,897. May I carry that last question a little further ? The Secretary of State says it would be impossible for there to be any agreement between the States on the subject of Federation until it was known what the Constitution Act was going to be. I quite understand that, but I would like to ask him this : whether any evidence is as yet available as to the extent to which the States are prepared to accept the authority of a Federal Government ?—Yes ; we have had, of course, a great deal of discussion over points of this kind over the last two or three years, and, speaking generally, the lists with the subjects in them have been agreed between ourselves and the representatives of the States. The actual way in which the jurisdiction should be carried out in a particular State, I think, must be the subject of a detailed agreement in the Treaty of Accession, but, speaking generally, these are the lists that have emerged from a very long discussion between ourselves and the representatives who have been in London from the States.

12,898. But could you direct my attention to any particular document which contains evidence of the meaning attributed to the word "Federation" by the States which have accepted the idea of Federation and intimated their willingness to participate in it ?—I am not quite sure of the kind of Document Lord Lytton has in mind. This is the kind of subject that has been constantly discussed in the last two or three years. He will find detailed reference to it in many of the Committee's reports, and in the proceedings, for instance, of the Council of Princes last March in India. I am not quite sure what further he has in mind.

12,899. What I want to know is this : Whether in the course of the discussions to which the Secretary of State has referred the representatives of the Indian States have expressed their willingness to accept the authority of a Federal Government under the Constitution Act, and whether there is any documentary evidence of the extent to which they are prepared to accept that authority ?—The evidence of the extent is really found in these lists which are the result, as I say, of all these discussions. If Lord Lytton would like further details about the form that the Instruments of Accession would take I would refer him to page 67 in the volume of the proceedings of the last Round Table Conference. He will find there a report of some discussions over which Lord Irwin presided between ourselves and the representatives of the Princes. If, after reading that and the other reports to which I have referred him there is anything else in his mind perhaps he will let me know.

Earl Peel.

12,900. There is one question I want to ask : As regards the enforcement of Federal laws in the States we have been told the situation is different there from that which it is in the Provinces, because there you would have, or you could have anyhow, the Viceroy acting through the political officer, and bringing the usual pressure to bear which he does bring to bear in certain cases in the States. My question is : Is it really wise to mix up in that way the specific duties of the Viceroy as representing the King Emperor and paramountcy, and so on, with the enforcing of Federal laws passed by the Federal Legislature, and so on, in the States ? Surely you want to keep the two things distinct. May I take one instance to illustrate what I mean ? If the Viceroy, as representing the paramount power has, as we know, power to deal very drastically in certain cases with ruling Princes in cases of disorder, or very bad Government, and so on, supposing there is a desire to enforce a certain law which has not been enforced in a certain State, if directions are given by the Viceroy, as representing the paramount power, to his political officer to exert pressure in that particular case, would it not appear to the

Princes and their advisers as if the Viceroy was extending his power of paramountcy and interfering with the internal affairs of the States, and, is it not very unwise, in the long view, to make use, if I may say so, of the Viceroy's power in that respect in order to enforce the decisions of the Federal Cabinet or of the Federal Legislature ?—Quite shortly, my question is, is it not very unwise to do so, and ought not the two authorities in their respective powers to be kept clearly and absolutely distinct as far as you can ?—I think there would be a great deal in Lord Peel's criticism if it was contemplated that this kind of intervention should be of common occurrence. I contemplate it only taking place as the ultimate resort in a very serious emergency, an emergency so serious as to amount in practice to the breakdown of Federation in respect of that State.

12,901. That, I agree, very much modifies my criticism, and I had not quite understood your answers in that respect. That does very much modify my criticism. But take, for instance, under paragraph 128, there are certain officers who I understand will be Federal Officers who will have the power of inspection, and so on ?—Yes.

12,902. They make recommendations and certain orders are made which possibly are not properly carried out ?—Yes.

12,903. That is not a case where you would invoke the great powers which the Viceroy possesses of paramountcy. I understand ? They would only be reserved for extreme and very important occasions ?—Yes. It must depend upon the actual case, but I contemplate only a case of great gravity.

12,904. Therefore ordinarily this sort of case which might be of frequent occurrence, of course, would not pass between the political officers, but would be transacted between the officers of the Federal Government and the State concerned ?—Yes.

12,905. I am much obliged for that answer. There is just one more point about which I wanted to ask. In the case of the directions the Federal Government gives directions, and so on, as to the manner in which the executive power shall be exercised, and, I think you told us that in the case of the

Federal subjects the Federal Government would have its own officers. Is not that so?—I said it would have its own officers for certain services, and it might have its officers for any service it wished.

12,906. But do you contemplate that very largely then, as indeed is suggested in the report of its relations between the Centre and the Provinces in the Third Round Table Conference, that in many cases there will be devolution to the Local Government, and the Local Government will really be through its own officers the agent of the Federal Government in carrying out the Federal objects, and you will not in all cases require a staff of Federal officers?—Yes, certainly, and I hope very much that that will be the normal procedure.

12,907. And, therefore, the general directions given to the Provincial Governments would often be directions as to their relations with the Federal officers, or, in other cases, will be directions as to how their own officers should carry out the Federal orders?—Yes.

12,908. That is so, is it?—Yes.

*Sir Akbar Hydari.*

12,909. Referring to paragraph 128 am I right in assuming that the acceptance of that proposal as at present worded does not involve acceptance of any

*(After a short adjournment.)*

*Sir Manubhai N. Mehta.*

12,911. Secretary of State, this morning while discussing Section 125, you were good enough to express your readiness to qualify the words "every Act of the Federal Legislature" by saying that it may have to be confined to those Acts which are exclusively of the Federal sphere, so as to leave out those Acts which may belong to the sphere of concurrent jurisdiction?—I am not quite sure, Sir Manubhai, if I did say that exactly. I am not quite sure that I understood Mr. Manubhai's point, or whether I did say actually what is suggested.

12,912. What I mean was that this morning you were good enough to express your readiness (not your decision)

method or form in which the limitation by a State of the extent to which it federates in any particular subject will be expressed?—That is so. The methods of application must, it seems to me, be the subject of the Treaty of Accession. I hope, as a matter of fact, there will be as much uniformity as possible, but I can conceive of modifications in the field of uniformity, and those modifications no doubt would come into the Treaties of Accession.

12,910. That is all I wanted to ask you on the subject: that this does not permit or involve any particular form or constitutional position that will be taken up with regard to the extent to which a State has reserved its jurisdiction in particular Federal subjects, and that is to form the subject of discussion when we are discussing the Instrument of Accession?—There will be certain Federal subjects about which the States will have surrendered their rights. The exact methods by which those Federal subjects are administered will no doubt be the subject of negotiation with individual States. What, however, the Federation will have to be sure about is that there is a sufficiency of uniformity in the administration of Federal subjects as to make the administration efficient, and that there will not be such divergence of administration as to destroy the basis of Federation.

to consider the words "as to secure that due effect is given within the Province to every Act of the Federal Legislature," instead of "every Act of the Federal Legislature." You want to restrict it to exclusively Federal Acts so as not to include Acts of concurrent jurisdiction?—That is the actual position now under 125.

12,913. May I ask if you would be prepared to extend the same consideration to Section 127 which deals with States. "It will be the duty of the ruler of a State to secure that due effect given within the territory of the State to every Act of the Federal Legislature which applies to that territory." Would you not consider "every Act of the Federal Legislature" to mean pertain-

ing exclusively to the Federal sphere? As I understood it, you said this morning that as regards the States there would be greater reason to interpret it that way because there would be no concurrent field with regard to the States?—But 127 only does apply to the Federal sphere.

Sir *Manubhai N. Mehta.*] Then it is likely to be misunderstood. My interpretation was at one time, "every Act of the Federal Legislature which applies to that territory." When the Federal Legislature passes an Act, it will say it applies to the whole of India, and India may include not only British India but Indian States, so there is likely to be some confusion or ambiguity as regards applicability to that territory, so it would be I should say more expedient to limit this to every Act of the Federal Legislature which pertains exclusively to the Federal sphere for two reasons. One is, as you said, that there would be no concurrent field with regard to the States, and, secondly, that the States have internal autonomy which the Provinces at present do not possess.

Mr. *M. R. Jayaker.*] But may I put a question, Sir Manubhai?

Sir *Manubhai N. Mehta.*] Please let the Secretary of State answer me.

Mr. *M. R. Jayaker.*] I want to understand that question. Which applies to this territory? Do not these words exclude every Act of the Legislature in the concurrent field?

Sir *Manubhai N. Mehta.*] No, they may not, because, suppose the Federal Government passes an Act as regards negotiable instruments, and says it applies to the whole of India: By interpretation, India may mean territory subject to Indian States. There is a little ambiguity; I want that ambiguity cleared up.

Sir *Hari Singh Gour.*] The Federal Legislature has no right to legislate for the whole of India.

Mr. *Manubhai N. Mehta.*

12,914. I understand that, but where is the objection to removing the ambiguity?—I should be very glad if I could to remove any ambiguity that there is. At the same time, Sir

Manubhai Mehta will see that there are these kinds of difficulties which have to be taken into account. The Federal Act must be applied somewhat differently between one State and another. Moreover I think Sir Manubhai's fears are really groundless if he will look at Section 111. He will see there that the Federal Legislature is restricted exclusively to Federal subjects.

12,915. But there may be laws passed by the Federal Legislature upon subjects of concurrent jurisdiction, the civil and criminal procedure code or the penal code?—I will look into the point, but I would have said that the States were quite safe. Concurrent legislation does not apply to the States.

12,916. It should be made clear, because as I say, to me and to several of the Indian rulers the words "concurrent jurisdiction" have a different meaning. Concurrent jurisdiction will mean that even as regards railways or negotiable instruments which are Federal subjects, the States may have slightly different laws applicable to their local conditions, provided there was no fundamental difference between the two. That was how the States understood the words "concurrent jurisdiction"?—I will certainly look into points of that kind. Our intention is to safeguard the States' rights.

Mr. *N. M. Joshi.*

12,917. May I ask one question? You stated that concurrent legislation will not apply to the States. Will not the States be permitted to enter the Federation even as regards some of the concurrent subjects?—Certainly I would say that the States can surrender such powers as they think fit. There is, however, a minimum surrender without which their entry would not be accepted, and that minimum surrender is in the Federal field.

12,918. But if they at some stage choose to federate, even as regards concurrent subjects, there is nothing to prevent that being done?—No, I do not think there is.

Sir *Manubhai N. Mehta.*

12,919. Then I pass on to Section 128. That provides that "the Governor-General will be empowered" and with

The concurrence of any State "will be required to make agreements with the ruler of any State for the carrying out in that State, through the agency of State authorities, of any Federal purpose." I take it that this does not include the conjoint authority or corporate authority of two or three different States. I will give you an illustration: Two or three small States may for the purposes of securing efficiency arrange between themselves that they may have one common judiciary or common educational subjects or some other common service. Now the carrying out of the Federal instructions instead of being conveyed to the State Authority may be conveyed to the Conjoint State Authorities. I take it that this is not excluded?—Certainly it is not excluded, and I would say that that would be a movement that the Federal Government would be wise to encourage.

12,920. Another question on the same Section: "But it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself that an adequate standard of administration is maintained." I take it that this is, of course, confined only to the Federal sphere?—Yes.

12,921. Secondly, that in the phrase, "By inspection or otherwise", the word "otherwise" is rather too vague. It might include direct enforcement. The present practice is, for instance, in the Railway Department that there is the railway inspector who goes round the State Railways and inspects them; if there are any defects, he reports those defects to the State Governor. There is no direct enforcement, so "or otherwise", I take it, does not include direct enforcement?—Sir Manubhai will have heard what I said this morning. I think I made the position quite clear that there is no intention in anybody's mind of marching armies into States and enforcing agreements. Really the use of the phrase "or otherwise" I think is meant just as much in the interests of the States as in the interests of the Federal Government, namely, that it might not be necessary to have a direct inspection of Federal arrangements at all, but other arrangements might be made for the

inspection to take place by the agents of the State acting on behalf of the Federal Government.

12,922. Only, as I said, misapprehension may be removed if it is made clear that "or otherwise" does not include enforcement. With regard to these officers of the Federal Government being located in States, I take it that they are there subject to the ordinary laws of the State? If they commit an offence it would be according to the laws of the State that they would be tried; they would not claim any diplomatic immunities?—The question is new to me; I would have said offhand not. I will look into it.

Sir Manubhai N. Mehta.] What I wanted to know was that they would be amenable to all the ordinary laws of the State where they are placed.

Sir Hari Singh Gour.] They would be agents of the Federal Government.

Sir Manubhai N. Mehta.

12,923. For instance, if he commits a crime, he must be liable to the laws of the district. Of course, the fact that Sir Hari Singh Gour has asked this question shows that there is some difference of opinion. The last question is about No. 129: "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled". By "Federal obligations" I understand they imply also a respect for the provisions of treaties which are already entered into and which may be preserved or saved in the Instrument of Accession?—I am not quite sure that I have followed Sir Manubhai's question.

12,924. What I wanted to know was that the Federal obligations of that State are duly fulfilled. Federal obligations of course are in the Federal sphere and subject to the existing treaties and engagements?—Yes. Here again I am not quite clear whether I have given an answer to Sir Manubhai's question or not. Existing treaties of course as modified, if they are modified, in the Instrument of Accession.



12,925. That I understand. This morning, in reply to a question by Lord Peel and also Sir Reginald Craddock, the question of excise obligations or excise relations was discussed, and in reply to Lord Peel you were good enough to say that in such matters paramountcy would not necessarily be appealed to, but it will be preceded by friendly negotiations of Ministers of the Province and Ministers of the State. I wanted to know if in such negotiations or discussions if the State does not carry out its obligations, it is a non-Federal matter. Excise relations are not Federal matters, but are non-Federal matters, and if the State did not carry out its obligations or agreements, you were good enough to say that the matter will ultimately rest with the Viceroy, and the Viceroy, exercising his paramountcy power, will see that it is enforced. I ask the contrary question: Suppose that the Province does not carry out the obligation? In that case it came out this morning that the Governor-General will have no power to enforce it from the Provinces. May I ask if in such contingency the States may not be allowed the liberty to go to a Federal Court of Law?—We have already covered that point in, first of all, Section 70, sub-Section (e). It is that kind of case that we have in mind, that would be dealt with under subparagraph (e) of 70. In the case of the Governor-General it is 18 (f).

12,926. I only wanted to be clear whether these special responsibilities will apply to provisions of treaties and agreements with regard to such matters as excise arrangements, which are in the non-Federal sphere?—I would have thought that under 18 and 70 we really do cover those dangers, even outside the Federal field. We will look into Sir Manubhai's point and see whether it should be met further.

Sir Manubhai N. Mehta.] Thank you. That is all.

Mr. Y. Thombare.

12,927. I have a few questions. Secretary of State, the Instruments of Accession which the States will execute will perhaps be more or less uniform?—Yes.

12,928. But still, they will make certain reservations as regards the Federal

subjects. To the extent of the reservations, will they not trench upon the authority of the Federal Officers who deal with those subjects?—It would mean that the duties of the Federal Officers would be somewhat different in one State as compared with another in cases of that kind.

12,929. So that the reserved sphere would be excluded from the scope of the power of the Federal authority?—All that sphere would be excluded that had not been surrendered in the Instrument of Accession.

12,930. Would it be excluded from the scope of the Federal Ministers?—Certainly.

12,931. Then, as Sir Reginald Craddock pointed out, Provinces and States would have an interest in certain provincial subjects, for example, excise?—Yes.

12,932. And there may be agreements on such a subject between a Province and a State. In this respect again, these agreements will trench upon the power of the Ministers?—They might do one of two things; they might tie the hands of the Ministers or they might tie the hands of the State.

12,933. Both?—Yes.

12,934. Just as they will tie the hands of the States, they will also tie the hands of the Ministers?—Yes, they will be in the nature of an agreement between the two parties.

12,935. Then the reservations thus effected by the agreements in favour of a State would be excluded from the scope of the power of the Federal Ministers?—Yes. That is very much the same question in another form that I answered just now.

12,936. Then in so far as a provincial subject may be the subject matter of an agreement between a Province and a State, the agreement would really be between the paramount power and the State, and, to that extent, it would perhaps not be a provincial matter at all?—I do not follow that line of reasoning. The agreement would be between the provincial Government and the State. There would only be an intervention in the field of paramountcy in the sort of conditions that I described this morning,

namely, a very serious emergency striking at the roots of the State's Federation generally.

12,937. What I have in view is merely this, that the reservations that may be effected by such an agreement between a Province and a State would exclude that subject to that extent from the authority of the Ministers, and therefore the reserved subject would be a matter for the jurisdiction of the Viceroy as representative of the paramount power?—I think it might be that. It might, on the other hand, be an agreement that tied the hands of the Ministers of the States.

12,938. But just as it tied the hands of the Ministers of the States, so would it also exclude the jurisdiction of the Provincial Ministers?—It might of course do that. It might, on the other hand (I have not got any concrete case in mind) I suppose, extend the activities of a Government if it was agreed to do so in the negotiation.

12,939. What I have in mind is a kind of disagreement arising between a State and a Province. In that case, would not the dispute be entirely for the Viceroy to decide?—It is very difficult for me to answer a general question of that kind without having clearly in my mind the kind of case that is contemplated. Could Mr. Thombare give me a concrete case as an illustration?

Mr. Y. Thombare.] Supposing there was an agreement about excise arrangements between a Province and a State and there may be a term as regards the number of shops that are to be authorised for the sale of liquor: there may be a disagreement between the Province and the State as regards the number of shops to be maintained in a particular zone; who would be the competent authority to decide such a dispute? Though constitutionally speaking the question may be one for the Governor, it has to be remembered, as you, Secretary of State, pointed out, that the Governor and the Ministry would be normally working in close relations with each other, in friendly relations with each other, and it would involve a heavy strain on the Governor to maintain an attitude of detachment.

Mr. N. M. Joshi.

12,940. Will the Secretary of State state how the disagreement is to be resolved?—The disagreement would have to be resolved by negotiation in the first place, and if negotiation did not succeed, either the agreement would collapse or, in the event of the disagreement leading to a grave emergency, then the Viceroy would have to deal with it in the field of paramountcy.

Mr. Y. Thombare.] But it is conceivable that there may be no plain emergency, yet there may be disagreement with regard to certain points. Now who would solve that kind of disagreement?

Sir Austen Chamberlain.] Is Mr. Thombare dealing with a question where no agreement is reached about such a question of excise as he has spoken of, for example, between a Province and a bordering State, or is he dealing with a question where an agreement has been reached and one of the parties alleges that the other party is breaking it.

Mr. Y. Thombare.

12,941. It is the latter, Sir?—I think then it must depend a great deal upon the gravity of the case. I can conceive a case that was of no very great importance in which the result of a disagreement of that kind would be to bring to an end the agreement between the Province and the State. I can also imagine a case in which the issue might be justifiable and it might go to the Federal Court. I can also contemplate a type of case in which it might be agreed by both parties and by the Viceroy to have an *ad hoc* tribunal to inquire into it. I can contemplate a number of ways of dealing with a case of that kind. It must really depend upon its gravity.

12,942. And the ends of Justice?—Yes.

Lord Rankeillour.

12,943. If the quarrel was between a Province and a State, could not the Province have instructions under the second part of 125, from the Federal Government as to its policy towards the bordering State?—I am not sure whether that would be Mr. Thombare's point.

A good deal of Mr. Thombare's argument was directed to cases which were not strictly in the Federal field.

12,944. A quarrel about arrangements for the collection of excise duties surely would be in the Federal field?—No; in the provincial field.

12,945. I know?—I do not think the second paragraph of 125 would meet what is in Mr. Thombare's mind.

Sir *Austen Chamberlain*.] The example which Mr. Thombare gave is an agreement providing for instance that within three miles of the Frontier on either side there shall be no licensed premises, and it is alleged either by the Province that the State has broken the agreement, or by the State that the Province has broken the agreement. Is not the answer of the Secretary of State the right one: that is a matter for negotiation? It may lead to the cessation of the agreement, the collapse of the agreement, unless the agreement has specifically provided some tribunal to which such a dispute should be referred.

Archbishop of *Canterbury*.] Or unless by mutual agreement reference is made to such a Court. It need not be in the original agreement, the agreement between the parties.

Sir *Austen Chamberlain*.] Yes.

Mr. Y. *Thombare*.

12,946. What would be the position of the Ministers, whether in the Province or the Federal Government, with regard to the paramountcy staff of the Viceroy?—They would have nothing to do with it.

Mr. Y. *Thombare*.] Then Proposal 123 raises the question of the States' Instruments of Accession. Would it be in order to raise the question of the Instruments of Accession now under paragraph 128?

Chairman.] If it relates to these paragraphs, it would probably be convenient to take it now.

Mr. Y. *Thombare*.] Yes. The States evidently want to carry out as many Federal purposes as possible in their territories.

Archbishop of *Canterbury*.] What is the paragraph, Mr. Thombare?

Mr. Y. *Thombare*.

12,947. Paragraph 128; the States will evidently want to carry out as many Federal purposes as possible in their territories through their agency, and they will therefore desire to make provisions to that effect in their Instruments of Accession. In such cases, the Government will no doubt satisfy themselves in the first instance that the agency of the State will be competent for the purpose for which it is offered, but I hope the Government in that case will not make any discrimination between one class of State and another and that the only point that will matter will be whether the personnel that the States offer can be trusted to carry out the duties required of them?—An arrangement of that kind must be exclusively upon the merits of the particular case. Obviously, it would be necessary to take into account the efficiency of a particular State for carrying on particular duties. Obviously, also, one would have to judge to a certain extent from past experience and past history.

12,948. Because not all the States are in the same state of development, and their administration varies. There are States which have reached a high degree of efficiency, and their administration has been spoken of highly by competent authorities. They may not have a high salute, but their administration would bear comparison with the administration of some of the most advanced provinces; so would the question of the agency offered by them be considered on its own merits?—I think all these cases have got to be considered on their own merits. What may be applicable to one case would not be applicable to another. For instance, one service differs from another. Although the administration of a small State might be extremely efficient, none the less it might strike at the very roots of the Federation if every small State had its own administration of a big service. One has got to take all those facts into account.

12,949. It would merely be the efficiency of the service that would matter in such a case, would it not?—It would be the efficiency of the service and the general effect upon the administration of that particular

Federal service, that is to say, the efficiency from the point of view of the State and also the efficiency from the point of view of the Federal Government.

12,950. And that would be governed by the consideration of merits?—Certainly.

12,951. In any case, an ambitious circumstance like a salute would not stand in the way?—I do not think salutes would come into this kind of question at all.

*Mr. Zafarulla Khan.*

12,952. Secretary of State, in order to understand some of the matters which appear to be causing difficulty with regard to this part of the subject, I am afraid I shall have to ask you or your advisers some questions which might tend to clear up, in the first place, the genesis of these three lists, Federal, Provincial and concurrent. If you will kindly help the Committee with regard to the present position, perhaps it would be easier to follow the proposals of the White Paper which have arisen from it. May I draw your attention to Schedule I of the Devolution Rules of the Government of India Act?—Yes.

12,953. This Schedule has two parts. The first part contains a list of Central subjects?—Yes.

12,954. And the second contains a list of Provincial subjects?—Yes.

12,955. Item 46 of this first part of the Central subjects list says: "All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among Provincial subjects," that is to say, all such matters expressly excepted shall be Central subjects?—Yes.

12,956. I will take one item of the Provincial subjects to illustrate what I mean, if you will kindly turn to Item 5 in the Provincial List—Education?—Yes.

12,957. It says: "Education, provided that (a) the following subjects shall be excluded," and then it describes certain subjects. Stopping here for the moment, the effect of this entry is that education is a Provincial subject, but those portions of education which are specified in

Sub-item A are not Provincial because they are expressly excepted?—Yes.

12,958. Then (b) goes on to say: "The following subjects shall be subject to legislation by the Indian Legislature, namely"—then a list follows which has been subsequently modified?—Yes.

12,959. This I understand means that the whole of the rest of the subject of education is Provincial, but again certain parts, even out of this residuum, although the subject is Provincial, are subject to legislation by the Indian Legislature—the Central Legislature?—Yes.

12,960. So that I understand that this list in Part II starts with this. It describes Provincial subjects in this way: Either a subject is wholly Provincial or a subject is Provincial to a certain extent and the remainder of it is not Provincial, but even out of Provincial subjects certain portions of Provincial subjects are subject to legislation by the Indian Legislature?—Yes.

12,961. That is the present existing position?—Yes.

12,962. Do you recollect, Secretary of State, that during the first Round Table Conference a sub-committee under the Chairmanship of Lord Zetland was appointed to consider these lists, and their report is at page 28 and subsequent pages of the Reports of the First Round Table Conference?—Yes.

12,963. They have divided the Schedule appended to their Report into various sub-heads. The first is A "Central subjects which are proposed to be wholly or partly federalized." That is at page 28. Then B on page 32: "Central subjects, no portion of which is proposed to be federalized." Then at page 33, C: "Provincial subjects subject to legislation by the Indian Legislature." I take it that that is the portion of the second list under the Devolution Rules which is subject to Indian legislation, but the subjects are nevertheless provincial?—Yes, that is so.

12,964. Then D: "Provincial subjects specially excepted and those in respect of which extra-provincial control is exercised." That is at page 36?—Yes.

12,965. Am I right in understanding that the concurrent list which has eventually emerged as part of the White

Paper proposals is a list which has been framed out of these classes of subjects C and D, Provincial subjects, in which it is desirable that the Federal Legislature should also have a power to legislate?—Yes, substantially that is so.

12,966. Subject to modifications. I have noticed some modifications myself?—Yes.

12,967. But substantially it has emerged from those two lists?—Yes.

12,968. And that is touched upon in the Third Round Table Conference Report at page 18, paragraph 5, about the middle of the paragraph?—Yes.

12,968A. "The Committee therefore consider that practical requirements will in any event necessitate a field in which both Centre and Provinces should have legislative jurisdiction?—Yes.

12,969. "The Committee consider that the problem could be dealt with with sufficient precision by constituting a common field to which would be assigned matters upon which uniformity of law is or may be desirable and by assigning to both Centre and Provinces the power, but not the exclusive power, to legislate upon any subject included in it; but some method must at the same time be devised whereby administrative powers and functions which properly belong to the Provinces in respect of these subjects are secured exclusively to them?"—Yes.

12,970. I suggest that this last portion, that by making this field concurrent we should not lose sight of the administrative powers and functions which with regard to these subjects properly belong to the Provinces, was put in because these subjects to start with, even under the present system, are Provincial and this concurrent power of legislation at the Centre is given because they are eminently matters in which, if possible and subject to local requirements, uniformity is desirable?—That is generally the case.

12,971. That being so, may I now draw your attention actually to the concurrent list in the White Paper Proposals, page 119?—Yes.

12,972. The first 10 items in this list deal almost exclusively with law in the sense that it is legal enactments and

statutes with regard to which the power of concurrent legislation would be exercised?—Yes.

Mr. *Zafrulla Khan*.] For instance, No. 1 is dealing with the jurisdiction powers and authority of Courts.

Sir *Hari Singh Gour*.] No. 11 would also come under law.

Mr. *Zafrulla Khan*.

12,973. Yes, but other considerations may arise. A good many others may come in, but the first 10 are exclusively law. No. 2 is: "Civil Procedure, including the Law of Limitation and all matters now covered by the Indian Code of Civil Procedure." Supposing there was legislation on it by the Federal Legislature subject to the provisions of paragraph 114 of the White Paper, surely there would be no question of the enforcement of such a piece of legislation by the Federal Government. Supposing the Law of Limitation applying to a certain class of suits were extended beyond the period now in operation, surely it would be an ordinary routine matter between litigants coming up before the courts. One would allege possibly that one period of limitation applies; the other would allege that the other applies; and it would be for the court to decide which particular enactment applied to the suit?—Yes, that is so.

12,974. So that I take it with regard to such matters no difficulty arises with regard to the enforcement of concurrent legislation?—No, I think I generally agree.

12,975. The only difficulty would be that the courts would, in many cases, have to decide out of two conflicting pieces of legislation, say, Provincial and Federal, regulating the same subject which under the provisions of the Constitution Act had priority?—I suppose that would be so, yes.

12,976. Under paragraph 114?—Yes.

12,977. And the moment that has been determined they simply proceed to determine the suit pending before them accordingly?—Yes.

12,978. I submit that the same would be true of the law of evidence which is the next title, and to oaths. Supposing a Federal Statute said certain kinds of

evidence are not admissible in certain proceedings, when such proceedings are pending before a Court of Law it will take cognisance of that and refuse to look at that evidence or *vice-versa*?—Yes.

12,979. You do not require special machinery to enforce an amendment of the Evidence Act by the Federal Legislature. The same applies to "Marriage and Divorce," and to "Age of majority and custody and guardianship of infants." I need not go on to enumerate all these subjects. As I have said, they are purely legal subjects. Then I draw your attention to Item 11: "Control of newspapers, books and printing presses." It may be that the Federal Legislature may consider that some uniform regulation of printing presses is necessary, say, having regard to a widespread campaign of sedition. It may mean requiring the Press to give security or the enforcement of penal provisions. So far as the question was merely one of enforcing that legislation in Courts of Law, so far as it merely created offences, the same considerations would apply here also?—Yes.

12,980. So far as it related to purely executive action, that if, in the opinion of the Government, a certain press or a certain newspaper has transgressed certain limits, the Government might proceed either to forfeit the press or to stop the issue of the newspaper and so on; that no doubt would be executive action, but Law and Order being a Provincial subject, it will be the local government which will have to take action?—Yes.

12,981. If the uniform law said that in order to prevent sedition a certain action might be taken the proceeding is analogous to that which is at present prescribed by the Criminal Procedure Code with regard to offensive publications and so on, and the local government could take action in exactly the same way as it does under the present provisions of the Government of India Act?—Yes.

12,982. With regard to "lunacy, but not including lunatic asylums," all that I can conceive is, either that the definition of lunacy or the procedure laid down with regard to Commissions of Lunacy is meant. That again is a pure

matter of law and application is made to a district Judge under the present Act to appoint a Commission of Lunacy and he will have to find out what law he has to apply and what definitions he has to apply?—Yes.

12,983. And if the Federal Legislation has laid down the definitions of lunacy and the procedure and so on, and that has been laid down under the provisions of paragraph 114 the District Judge will proceed to apply that law. I do not see why any special machinery should be necessary to apply the definition of lunacy laid down, say, in a Federal Statute. Then: "Regulation of the working of Mines, but not including mineral development." In the regulation of the working of Mines the legislation may provide for two kinds of things. I can conceive that Federal Legislation may prescribe certain action to be taken by the owners of different mines for the safety of workmen working in those mines—positive action, requiring that they shall do certain things in order to ensure their safety, and, as a necessary consequence, it will, of course, have to provide that in the case of default on the part of these owners with regard to these matters there shall be certain penalties imposed upon them. The first kind, of course, might require machinery for inspection?—Yes.

Mr. *Zafrulla Khan*.] And the enforcement of the second part in the case of failure would be by the ordinary means of prosecution. I apprehend that the second part would cause no difficulty whatsoever; it is the same as enforcing any other of the provisions of the Penal Code. The Provincial Magistracy every day enforces the provisions of the Penal Code and they will also enforce the provisions of any penal legislation passed by the Federal Legislature.

Mr. *N. M. Joshi*.] May I intervene for a second, because the same question has arisen as regards the factories. It is not that every citizen will be able to prosecute for a breach of the Mining Regulations or Factories Act. Both these pieces of legislation authorise the Factory Inspector or the Mine Inspector to prosecute, and nobody else. Therefore, legislation of this kind will require some organisation to see that the legislation is given effect to.

Mr. *Zafrulla Khan*.] If Mr. Joshi will forgive me, it is just that point I was coming to. I have already said there would be two parts. Once the prosecution is launched the case would be just the same as any other criminal case. The question would be with regard to the Inspectorate. I have said that already. You would require Inspectors to see, in the first instance, that the precautions prescribed by the Federal State were given effect to, and carried into practice, and that if those precautions were not put in force then, that there was consequent action taken whether by prosecution or imposing penalties, or of something like that. Here the question arises that, in the first place, the province itself may have legislated upon the subject. If it has done so no further question would arise. If it has not done so then there are again two questions. If the Province already has an Inspectorate for similar purposes I really do not see where the difficulty would be if the Federal Statute provided as a uniform matter for the whole of India that in addition to the duties which these Inspectors are already performing they shall see that certain other parts, or certain parts of this Federal Statute are also carried into effect. That could be arranged for, as a matter of agency, if there was no other provision for it, the Local Government carrying out as agent the functions on behalf of the Federal Government. On the other hand, it may be a matter which the Federal Legislature, or the Federal Government might consider would involve the expenditure of money on behalf of somebody or the other in order to get it carried into effect. With regard to that may I draw your attention to paragraph 114 of the White Paper. The principle accepted, at any rate in the Round Table Conference—I am not trying to bind the hands of the Committee in any way—was that with regard to concurrent legislation the Federal Legislature should not undertake legislation which would involve the Provinces in a financial obligation.

Sir *Hari Singh Gour*.] Chaudri Sahib, it is a little before what you have said that the difficulty comes in. The Provincial Government have got their own Act, we will say, and the Federal Legislature have passed another Act, and

both require particular machinery for the inspection of mines and other things. The Provincial Government say "We are going to abide by our own Act", and the Federal Legislature desire that they should abide by the Act and carry out the purpose of the Federal Act. Now what sanction is there behind the Federal Legislature to enforce their view upon the Provincial Government in preference to the provision of their local Act?

Mr. *Zafrulla Khan*.] I am aware of that. I am dealing with cases in which the difficulty would not arise, and then I am coming to the provisions which may require consideration from that point of view. Let us consider the competence of the Federal Legislature to pass a certain kind of legislation. If the Federal Legislature proposed to pass legislation which would involve a Province in a financial obligation my position is that, so far as the White Paper at present stands, it will not have the competence to do so.

Sir *Hari Singh Gour*.] That has been admitted.

Sir *Austen Chamberlain*.] Mr. *Zafrulla Khan*, may I get that point clear? As I understand that is a provision which means exactly what it says, that the Federal Legislature in this sphere is not to impose a change upon the Provincial revenue; but that is no limitation on the power to legislate?

Mr. *Zafrulla Khan*.] No.

Sir *Austen Chamberlain*.] Provided that the Federal Legislature itself provides for any expense which its legislation causes.

Mr. *Zafrulla Khan*.] Exactly. I am coming to that. The result would be as Sir *Austen* has very pertinently pointed out, that the Federal Legislature can pass an Act saying certain things shall be done, and certain regulations shall be enforced and saying there shall be an Inspectorate to see that those are done, and, if they are not done, to prosecute, but, in that case, it must provide the Inspectorate itself, because it cannot lay a financial obligation on the Province as a result of its own legislation. There is nothing to prevent the Central Federal Legislature from doing so, but I will take the other point made by you presently.

*Lord Eustace Percy.*

12,984. May I intervene, because I misled the Committee by an observation I put to the Secretary of State this morning. Is it not the fact that under List II the administration of all concurrent Acts is exclusively Provincial?—Yes.

12,985. In which case the Federal Government would not have power to appoint its own Inspectorate. How does Mr. Zafrulla Khan deal with that?—The provision is there whatever provision may cover it.

*Mr. Zafrulla Khan.*

12,986. With regard to the administration of the subject, so far as it was regulated by legislation, either concurrent or Provincial, where the Province was not required to spend any extra money there should be no interference with the administration by the Province, the whole object being that it is uniformity in legislation that is desired; but supposing a situation arose where it is found that on a strict interpretation of these rules and schedules the Federal Legislature has power to legislate, but such legislation involves a financial obligation, such financial obligation shall not be imposed on the Provinces, but then they can have their own machinery to administer what is purely Federal legislation laid down?—No, I do not think that is the case. In a case of that kind what would happen would be that the Federal Government would not have its own agents, but it would pay the Provincial Government to carry out its service.

12,987. I have said that; one or the other. They can either carry it out through provincial agency and let the Provincial Government act as their agents, in which case there is provision saying that if it does not involve extra expenditure there shall be no contribution made, and if there is extra expenditure a contribution shall be made by the Federation or (I may be venturing an opinion) it may be that they have the power to legislate and provide their own machinery?—We have not got that alternative provision in the White Paper now, and I could make some objections to it, I think.

*Mr. Zafrulla Khan.*] It may be that wants to be considered, but, taking up

Sir Hari Singh Gour's point, that point really does not arise, for this reason: Supposing there is a Provincial Statute saying the maximum working week, let us say, shall be 56 hours, and a Federal Statute subsequently lays down for the whole of India that the maximum working week shall be, let us say, 48 hours, and imposing penalties upon employers who employed people for a longer period than 48 hours during the week, so far as that is concerned it is merely a question for the Courts to resolve this conflict of legislation.

*Marquess of Reading.*] But who has the right to bring it to the Court? Supposing the obligation is upon the Provincial Government to do certain things in consequence of concurrent legislation by the Federal Legislature, and assume that the province is not disposed to put in force this Act, and therefore it refuses to take the steps to bring the person to book who has contravened the Act, what is to be the action taken then?

*Mr. Zafrulla Khan.*] Lord Reading, if that were the only difficulty the power of prosecution would be left to anybody affected.

*Marquess of Reading.*] A private individual?

*Mr. Zafrulla Khan.*] Yes.

*Marquess of Reading.*] That is not the same thing.

*Sir Austen Chamberlain.*] Are we to understand that the remedy of the Federal Government for a breach of the law is to be an action by a common informer?

*Mr. Zafrulla Khan.*] No not by a common informer; I said by the person injuriously affected.

*Earl Peel.*] By an employee of the factory?

*Marquess of Reading.*] But the obligation is on the Provincial Government. It has to carry out the obligations under the Federal Legislation. Supposing it refuses to do it—it "abstains" to use the word Lord Salisbury employed this morning—what then is to happen? As far as I understand from you it is left to the individual. That is surely not a satisfactory state of things in enforcing the law.



Earl Peel.] Would the Federal Minister bring an action against the employer ?

Mr. Zafrulla Khan.] Of course he would. There are two replies to Lord Reading's last question. I am not assuming, as he is assuming, that any factory legislation by the Federal Legislature will necessarily say that only the Local Government would be competent to prosecute. It is only if the Act says that, that that difficulty arises. Secondly, there is nothing to prevent a Federal Statute which imposes penalties from providing for bringing these offences to the notice of the Court, on complaint by any particular officer—any Federal officer whose attendance in the Court may not be necessary. The present procedure Code provides for several kinds of complaint where it is not desirable that any person should set the machinery of the Code in action. The officers write the complaint out to the Court, and it is not necessary for them to attend, and the prosecution proceeds.

Sir Hari Singh Gour.] But to that extent it will encroach upon provincial autonomy. That will be usurping the jurisdiction of the Province to control its own affairs.

Mr. Zafrulla Khan.] I am not at present on the discussion of the question as to what subjects should or should not be in the concurrent list. If the Constitution provides that to a certain extent these subjects which, with regard to the remainder of them, are provincial, shall to some extent, or to a certain extent be subject to legislation by the Centre that, in itself, is an encroachment upon Provincial autonomy which the Constitution Act considers it is necessary to make.

Lord Eustace Percy.] I wonder if Mr. Zafrulla Khan would address himself to a somewhat different case. Supposing a power of exemption, as is usual, is given in a general fashion in the Act allowing overtime at the discretion of some exempting officer, and supposing that is administered by the Provincial official in such a way as to nullify the law (there have been many instances of that in the past not in India but elsewhere). what remedy has the Federal Government then got ?

Mr. Zafrulla Khan.] What kind of provision ? Provisions which an Inspector would have to see were fulfilled, and he neglected to see that they were fulfilled ?

Lord Eustace Percy.] No ; giving the factory owner the power to apply to an official for permission to work overtime in special circumstances, and the official so administers the law that he grants every application made to him, and therefore in fact nullifies the law.

Mr. Zafrulla Khan.] So far as that is concerned that might happen in a provincial subject too. I do not think any constitution could provide by provisions in the Constitution Act, or by rules made thereunder, that any officer upon whom any duty might be laid will discharge it exactly as the framers of the Constitution think he ought to discharge it. That, I am afraid, has got to be left to the defects of human nature.

Sir Austen Chamberlain.

12,988. May I put a question with your leave, Mr. Zafrulla Khan, to the Secretary of State ? If I rightly understood what Mr. Zafrulla Khan said and what you answered, the administration of a law passed by the Federal Legislature in the concurrent sphere will be in the hands of the Provincial Government ?—Yes.

12,989. If the Provincial Government failed to enforce that law, would it be open to any Federal Official to bring the matter before the Court, or would such action as that contravene the provision which leaves the administration of the law to the Provincial Authority ?—Off-hand, I should say, it would depend upon the clauses of the particular Act.

12,990. But if the provision is general, that the administration of the law belongs to the Province alone, what provision in a Federal Act could nullify that constitutional provision ?—I am not a lawyer at all, but I seem to remember in Bills and Acts of Parliament there usually is a clause saying how procedure can be started and how a case of contravention of that particular Act can be brought into Court. I should have thought that recourse would have to be made to the same kind of procedure in the Federal Act.

12,991. Would it be possible to include in the Federal Act a right of the Federal Officer to interfere in administration if the Provincial Officer or Government failed to discharge its duty, or would it be precluded by the terms of the constitution as contemplated in the White Paper?—I think offhand I would say it would be precluded under our present proposal.

12,992. Then we come back to the point put earlier by Lord Reading and by myself, that if the Provincial administration for any reason deliberately refrains or refrains from administering a Federal Act in the concurrent sphere in a particular province, that Act becomes null and void in that Province, and there is no remedy?—Well, we have just been talking about one remedy, that an aggrieved person can bring an action. That is certainly a remedy of a kind. Sir Austen may not think it is an adequate remedy, but it certainly is a remedy.

Dr. B. R. Ambedkar.] Might I give another example which comes to my mind? Supposing for instance in a state of emergency the Central Government passes a Press Act under which provision is made that no paper may be started unless it deposits a certain amount of security. Now that sort of legislation is not going to affect any particular private individual. Supposing there is a paper in a particular province which is helping the Government of the day—a Party paper: Supposing that paper is influencing the Press Act passed by the Central Legislature, and supposing on account of that affiliation between the particular newspaper journal and the Government of the Province, the Government refuses to take any action against that particular paper, what is the position? Surely no individual is affected in this particular case?

Sir Hari Singh Gour.] There would be the penal clause that he who runs an unauthorised paper will be punished.

Dr. B. R. Ambedkar.] That is exactly the point.

Sir Austen Chamberlain.] Somebody has to put the law in motion.

Marquess of Reading.] And has to have the information and all the machinery for reaching the Government.

Dr. B. R. Ambedkar.] If he charges a particular officer to carry on the prosecution and the local government pays the expenses of that prosecution and does not make provision for it in the budget, what is to happen?—I see all those difficulties. At the same time I cannot help seeing the difficulties, on the other side. The case mentioned by Dr. Ambedkar is essentially a case of law and order, and law and order is a provincial subject and interest. The interest of the Federation is the interest of uniformity, but that does not affect the fact that primarily that case is a provincial case. If the argument suggested in Dr. Ambedkar's question and in Sir Austen Chamberlain's question, too, if I may say so, is pressed to its logical conclusion, it really does mean that the Federation will control the law and order in the Provinces, and that is directly contrary to the principles as at present drafted in the White Paper.

Dr. B. R. Ambedkar.] I beg your pardon. My point is this, if I may submit it: either you must make law and order a purely provincial matter, a provincial concern which the centre has nothing to do with, and then, of course, you can have the argument which you urged just now, but if you make it a matter of concurrent legislation, then I think the Federation must be in the position to see that the law is corrected.

Mr. Zafrulla Khan.

12,993. May I put this, Secretary of State? Of course, we are taking cases of provincial Governments which might do all sorts of things. What provision is there that the ordinary provisions of the criminal law will always be enforced by a Government against people against whom, it may not wish to put them into force. We must trust to the ordinary machinery and ordinary procedure carrying on in ordinary times?—There is, of course, no such guarantee except in the case of a grave emergency, when the Governor-General and the Governor intervene under their special powers, and, short of that kind of case, I cannot myself see what guarantee there can be. If members of the Committee can suggest a practicable guarantee, so much the better, but all the suggestions so far

have gone to show me that the guarantee would not be effective, and all that you would do would be to bring the Federal Government into the field of provincial law and order with the almost certain result that you would make the state of affairs much worse than it was at the beginning.

*Sir Austen Chamberlain.*

12,994. Secretary of State, I apologise for intervening again, but have you really understood my suggestion? In the case of a matter reserved to the Federal sphere, you give certain powers to see that the Acts of the Federal Parliament are enforced by the Provinces, to the Federal Government. You do that in matters which are reserved for Federal legislation. Why will not the same steps be applicable and sufficient in the case of legislation in the concurrent sphere where Federal legislation overrules the Provincial legislation?—Sir Austen is, if I may say so, again asking me a question that he asked me this morning.

12,995. I am?—I cannot give any answer other than the answer that I gave this morning, I feel, as at present advised (obviously, one will take into account Sir Austen's suggestions), that the carrying out of the intention that seems to be in his mind will be to undermine the Provincial administration for law and order, and I would particularly ask him once again to think of the difficulties that would arise under those heads. I think they are Nos. 9 and 10 of the concurrent list.

*Earl Peel.*

12,996. Secretary of State, not so much on a question of law and order as on the question that has been discussed of the enforcement of some factory Act where it might be to the advantage of every Province not to enforce it, would it be impossible to instruct a Federal Minister to instruct a Federal Officer in that Province to bring an action against the employer? That would come before the Federal Court; there would be no question of law and order there. It would simply be a decision of the case as to whether or not that employer had been acting in accordance with the law. Presumably, he would be condemned for

not carrying out the law?—That would be just the case I mentioned just now that would have to be dealt with in the specific Federal Act. In the Act the procedure would be set out under which an action might start for an infringement of the Federal legislation, but Lord Peel will I think see that as long as there is a concurrent list, and try as I will, it is almost impossible to get away from the concurrent list—it is very difficult to distinguish one of the items from another. Sir Austen's question covers everything in the concurrent list. I was making my caveat in connection with what is much the most difficult item in the concurrent list, namely, law and order.

12,997. I do not know whether it is possible to distinguish. Really my question was addressed to the point: it is not much good saying an employee has a right to bring an action against an employer, because these people have no money to do it, and therefore there is no enforcement of the law unless you get some official with the duty of bringing an action if he is so instructed?—I will certainly think over the suggestion. I am not, as I say, a lawyer, and I would not like to make a suggestion offhand.

*Archbishop of Canterbury.*

12,998. Does that not come back to the possibility in a matter of this kind of whether the Federal Legislature is at issue with the Provincial Legislature on a matter of concurrent jurisdiction? Does not that all come within the possible reconsideration and extension of paragraph 161, the power of the Governor-General to bring matters or instruct some officer to bring matters before the Federal Court?—I would not like to give an answer offhand to a rather technical question of that kind. I think it may be so. Here, now, His Grace will see at once that 161 deals only with reference to the Federal Court. I think he will see that that would not cover political questions in dispute. *Sir Hari Singh Gour.*] It will not be justiciable, either.

*Archbishop of Canterbury.*

12,999. I am presuming, of course, that regard will be had to the possibility

of extending that word "justiciable" there, which has been suggested more than once; or, if necessary, the Governor-General should instruct the Governor of the Province to bring the matter before the High Court of the Province?—Off-hand I would say that there was great risk in taking a political controversy, a controversy very likely of a vague kind, into a Court of any kind.

*Sir Austen Chamberlain.*] Your Grace, in many of the questions which we are contemplating, the question will not be as to what is a law; the law is perfectly plain. The question is whether the law is to be enforced, and who has the right to enforce it.

*Archbishop of Canterbury.*] Yes, but this question arose on who was to initiate proceedings in Court.

*Sir Austen Chamberlain.*] It is not for a declaration of the law, but for a prosecution.

*Lord Rankeillour.*

13,000. Secretary of State, for example, under No. 10, supposing the Federal Legislature passed an Act that a certain class of prisoner should or should not be admitted to bail and that act was violated by a District Magistrate granting bail, what could the Federal Authority do in such a case?—I do not think it could do anything, but I am not sure that it would be wise that it should be able to do anything.

*Sir Hari Singh Gour.*

13,001. The prisoner has distinctly the right to appeal to the High Court. In the case of Lord Rankeillour, he talked of the release of the prisoner on bail. If he is not released on bail, he goes to the High Court and appeals under the Federal Act, and the High Court will oppose the Federal Act in opposition to the Local Act and he will get his release?—That is so.

*Lord Rankeillour.*] But who would take it to the Higher Court?

*Sir Hari Singh Gour.*] The prosecutor or the person who has been improperly released on bail, or the person who is improperly detained in jail under the Federal Act.

*Earl Peel.*

13,002. The case of the man who is declared to be by the Federal law bailable and supposing he is not and he is not given bail by the Judge in the Provincial Court, surely in that case he has a right of appeal to the Federal Court and he will be, I presume, *habeas corpus*?—Yes, an appeal to the High Court. My answer to Lord Rankeillour was with reference to the Federal Government; it was not with reference to the aggrieved person.

*Lord Rankeillour.*

13,003. The Federal Act says that so and so shall not be admitted to bail; the bail is given in spite of that. What is that authority to do? You said before you thought it could do nothing. Sir Hari Singh Gour thinks it can do something?—Sir Hari Singh Gour's case was the other kind of case in which bail had been refused. There, I think, it is quite clear the aggrieved person could do something.

*Mr. Zafrulla Khan.*] Supposing the person is admitted to bail when the Statute regulating the matter says he shall not be admitted to bail?

*Sir Hari Singh Gour.*] In the converse case given by Lord Rankeillour, the prosecutor would go to the High Court according to the tenour of the Federal Act.

*Mr. Zafrulla Khan.*

13,004. I am perfectly certain it is not your ambition to provide in the Constitution Act with regard to individual cases where District Officers can carry out their duties in a statute which is not in conformity with the statute regulating those duties?—I do not see how you can meet all these contingencies in the Constitution Act or any Act of Parliament. It is possible that, if none of the agents will carry out their duties, any system will break down; in fact it is almost certain that it would.

13,005. Supposing a magistrate releases somebody on bail who should not be released in a Provincial State?—It might happen now.

13,006. May I just say to the Secretary of State that the one difficulty that pre-

sents itself with regard to the latter part of this list of concurrent subjects is the difficulty of setting the law in motion?—Two difficulties: the difficulty of setting the law in motion, and, in some cases, the difficulty of expense.

13,007. Now with regard to the difficulty of setting the law in motion, may I suggest that it is not concerned exclusively or even primarily with the question of the Federal or concurrent lists; it might arise even with regard to purely Federal matters. For instance, look at your subject No. 27 in the Federal List at page 114: "Control of cultivation and manufacture of opium and sale of opium for export": supposing there was a Federal statute, I myself do not think that contingency will arise, because I am visualising an ordinary state of affairs between the Provinces and the Federation, but let me put cases like those that have been put on the Concurrent List: supposing somebody cultivates poppies in contravention of the provisions of the Federal statute, provisions which are not looked upon with favour by the Provincial Government, who is going to prosecute?—I should have thought in that case offhand the Federal agent.

13,008. Excise being a Provincial subject?—I was thinking of opium. In the case of opium, there will always be a Federal agent, so I imagine.

13,009. Take Item No. 29 in that list: "Traffic in arms and ammunition, and, in British India, control of arms and ammunition." Supposing somebody was in illegal possession of arms in contravention of the provision of a Federal Statute upon the matter, who would prosecute him if the local government were not willing to carry out those particular provisions of the Federal State?—I do not suppose there would be a Federal Officer to prosecute in a case of that kind, so it will have to be the Provincial Agent.

13,010. I therefore submit that the difficulty is not peculiar to the nature of the concurrent list or Federal list. Under the purely Federal list, cases might arise if there was bad faith on one side or the other which might give rise to difficulties?—That is so.

*Sir Austen Chamberlain.*

13,011. But in the case of subjects on the Federal list on page 114, it would apply?—Yes, there is the power of direction. It does not follow though, as I said this morning, that every Federal service will have its Federal agents in the Provinces.

13,012. But the power of direction will be a power of direction to the Provincial Government and its agent?—Yes.

13,013. That is the remedy in the case of a subject on the Federal list?—Yes.

13,014. But it is a remedy which is not to be open to the Federal Government in the case of a subject on the concurrent list?—Not under our present proposals.

*Mr. Zafrulla Khan.*

13,015. I beg to differ, Secretary of State. May I draw your attention to paragraph 125, which says this: "It will be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province"? Surely a Federal Statute properly passed, having regard to the provisions on that matter is a Federal Statute applicable to the Province, whether it is on a concurrent subject or on a purely Federal subject?—I dealt with that at some length before Mr. Zafrulla Khan came to the Committee this morning.

13,016. But so far as paragraph 125 is concerned, it would cover both kinds of case?—Yes, but I drew a distinction between the power to give directions and the power to exercise a moral obligation.

13,017. Now with regard to the second part of this paragraph, may I put one question on the other side? The second part of paragraph 125 says: "The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject." I presume that is designed to meet a case where

the administration of a Provincial subject by a Provincial Government prejudicially affects the administration of a Federal subject?—Yes.

13,018. That being so, supposing the question arises as to whether such administration is or is not prejudicial to the administration of a Federal subject, does this paragraph not propose to make the Federal Government the judge itself in a matter in which it is concerned on the one side and the Provincial Government is concerned on the other?—I think that is so; I think it might be said that that was so.

13,019. On the other hand, supposing there was a complaint by a Provincial Government, either under the directions given under this paragraph, or the administration of a Federal subject in a Province was being carried on in a manner which was prejudicial to the administration of a provincial subject, what remedy does the White Paper provide for such a position?—What kind of case now does Mr. Zafrulla Khan have in mind?

13,020. I have not got any case in mind other than the case that is dealt with in the White Paper Proposals themselves, because, as I said, I am visualising an ordinary reasonable provincial Government and an ordinary reasonable Federal Government?—I am making the same assumption, but in the one case I had in mind certain concrete possibilities. I mentioned one this morning, namely, the Public Health Department of a Province rendering null and void the quarantine regulations. That seemed to me to be a possibility, although perhaps a very remote possibility. When Mr. Zafrulla Khan asks me why we do not give a similar power in the interests of the provinces as against the Federal Government, I own that I cannot myself see offhand any concrete case, even a remote one.

13,021. I think it may be possible, Secretary of State (I do not say it is very likely) that a set of quarantine regulations might very seriously circumscribe the beneficent activities of the Public Health Department of a Province?—I will look into Mr. Zafrulla Khan's point. There is every desire to hold the scales evenly between the two authorities, but

we have not put any provision in of the reverse kind that he suggests simply because we thought it was unnecessary.

13,022. May I make a suggestion on that?—Please.

13,023. My suggestion is that in order to meet both those objections, the first that a Federal Government might unnecessarily interfere with a Provincial Government, and secondly that there is no remedy in the converse case if it does occur, there should be a power in the Governor-General on the instance of the Government of a unit or on the instance of a Federal Government to issue such directions as may be necessary on the ground that the administration of its own subject or subjects by the one, prejudicially affects the administration of a particular subject of the other?—I will certainly take that suggestion into account and look into it further.

13,024. And finally on the main subject on which I have been putting questions for such a long time, Secretary of State, my suggestion is this: would not a further revision and reduction of the concurrent list possibly reduce some of the difficulties that have been felt with regard to the administration of some of the subjects in that list? My submission is that the first 10 will cause no difficulty whatsoever: Federal statutes on those subjects; civil procedure; limitation; evidence, marriage, divorce, and all the other subjects that are dealt with, are already being enforced every day by the Provincial Courts, and any amendment of them by Federal statutes will cause no difficulty whatsoever. With regard to subjects 11 to 23, I think if your experts will examine them further, and make an effort to reduce the list if possible, the difficulties will also be reduced to a corresponding degree. That is a suggestion I make, and I think it might help?—I think Mr. Zafrulla Khan's suggestion may be a valuable one. Certainly we will look into the list again. As he knows, we have had a great deal of discussion about the concurrent list, and I think everybody has started with a desire to have no concurrent list at all. The more of these lists you have the more opportunities in the

future for litigation and dispute, and most reluctantly we have been driven into proposing a concurrent list. The smaller that list the better from every point of view, and we will look into it again.

*Mr. M. R. Jayaker.*

13,025. Is the Secretary of State aware that there is a strong feeling on the other side that you have introduced into the concurrent list a number of subjects which ought to be central?—There is a very strong feeling in many parts of India that some of these subjects which you have put into the concurrent list ought to be central?—That would be a further argument for reducing it, Mr. Jayaker.

*Mr. M. R. Jayaker.*] I have no objection if the reduction is by taking them from the Federal List.

*Sir Akbar Hydari.*] We should have strong objection to that.

*Mr. Zafrulla Khan.*

13,026. The Provinces would object to that, and would welcome any transfer from the concurrent to the Provincial list?—May I just make this observation: If you remember, before we adjourned, I did suggest that we might possibly have a sub-Committee to go into very technical questions of this kind, my Lord Chairman. I think the fewer sub-Committees we have the better. I had hoped that we might be able to deal with the question in the whole meeting of the Committee, but it might perhaps be of value to the Members of the Committee and the Delegates who are specially interested in this question if I arranged a meeting at the India Office one day and let them meet the constitutional experts and go in rather greater detail into these very technical points.

*Sir Abdur Rahim.*

13,027. Secretary of State, generally may, I take it that the position with reference to Proposal 125 is this, that the concurrent list is a sort of exception grafted on to Provincial autonomy, and you are reluctant to extend that to the administrative interference of the Federal Government with the Provincial Governments?—Speaking generally, it is

a list of subjects in which the Provinces are primarily interested, and in which the administration will be Provincial. That is the reason why I draw this distinction between that list and the exclusively Federal list.

13,028. As I have understood you, once the Federal Legislature has passed a law under this list it becomes a Provincial law for the Provincial Government to administer; it becomes part of the ordinary law of the Province?—It remains a Federal law, but a Federal law that is valid in the Province.

13,029. It is enforceable in the Province?—Yes.

13,030. In the same way as the Provincial laws?—Yes.

13,031. And, as in the case of the ordinary Provincial law, there can be no guarantee to what extent it is enforced by the Provincial Governments, there can be no guarantee in the case of a law of that nature?—I suppose it would be true to say that there can be no guarantee in the case of any law, if the Government either administers it inadequately or refuses to administer it.

13,032. You rely on the responsibility of the Provincial Government?—I rely upon two things. I rely first of all upon the responsibility of the Provincial Government, and I rely upon the fact that the Federal Government and the Provincial Government will not be two Governments separated by an impassable gulf, but that the Federal Legislature will be composed to a great extent of Provincial representatives, and, I believe, in many of these questions there will be no difference of opinion between them at all.

13,033. You have stated that it would be very desirable to have a uniform list as far as possible. I should like to know, as a matter of information, that in many of the States on most of the items Nos. 1 to 10, I think, they have got the same laws as in the Provinces with some local variations?—It is so that there is a considerable uniformity now between certain States and the laws in British India.

13,034. And may I take it that the Provinces left to themselves would also in similar matters insist on having, or

would like to have the same laws throughout as they have now. They would not make any change unless the local circumstances require a change?—I should hope so. At the same time it is so essential that uniformity should not be broken up in certain directions, for instance, with the Civil and Criminal Codes, that I think some precaution is needed in the Constitution.

13,035. But, so far as the States are concerned, there can be no guarantee that there will not be different laws?—No; I am afraid we have got to accept that fact in a Federation of this kind.

13,036. I take it, so far as the legislation in these concurrent lists is concerned, that it is agreed that the representatives of the States would ordinarily, at any rate, not take any part in the discussion of purely British Indian subjects?—That is very much the attitude the representatives of the States have taken up.

13,037. And the British Indians would not like either that the representatives of the Indian States should deal with those subjects?—That has been the view very generally expressed.

13,038. And, I think you told us on a former occasion, that you relied on a sort of convention growing up in regard to this matter?—Yes.

13,039. If that is the state of things, is it not another very strong consideration for having one uniform list for the Federal subjects?—We do have one uniform list for the Federal subjects.

13,040. I understand that some States may not accede with reference to some particular subject, and then you have the concurrent list which concerns only the Provinces?—There must be some latitude in the negotiations with the States. Generally speaking, though, there is one Federal list, and we contemplate the units of the Federation accepting that list.

13,041. As regards the Federal list itself, after No. 48 there is a gap from subjects 49 to 64. I understand that that means that some of the States may not accede to them?—Yes, those subjects there have been regarded as subjects affecting British India, and not the States.

Sir *Hari Singh Gour*.

13,042. Central subjects?—Central subjects.

Sir *Abdur Rahim*.

13,043. So those subjects relating to British India will be exclusively dealt with by the Federal Legislature?—That is what it comes to. They are British Indian subjects pre-eminently, and, being British subjects, they are the kind of subjects into the discussion of which I understand the representatives of the States would not normally enter.

Mr. *M. R. Jayaker*.

13,044. But it is open to any Indian State to federate on any of those subjects?—Yes, and we should like to see the content of the Federation as wide as possible.

Sir *Abdur Rahim*.

13,045. That is something which concerns British India exclusively and not the States. Then there will be a very large number of subjects relating exclusively to British India on which the Federal Legislature will legislate?—These lists, as I say, have been drawn up after a great deal of discussion. All those kinds of considerations we have taken into account, and we think on the whole they are fair to the interests concerned.

Sir *Hari Singh Gour*.] My Lord, after the Secretary of State's statement that he proposes to invite a Sub-Committee to discuss these questions with his constitutional advisers, I do not propose to ask any questions.

Mr. *M. R. Jayaker*.

13,046. May I invite your attention to paragraph 125. The fourth line says: "due effect is given within the Province to every Act of the Federal Legislature which applies to that Province." My turn never came to put questions to you this morning, and I never asked you any questions. Is it intended that the words "Act of the Federal Legislature" refer only to Acts under paragraph 111? That is "The Federal Legislature will, to the exclusion of any Provincial Legislature, have power to make laws for the peace and good government of the Federation or any part thereof with respect to the



matters set out in Appendix VI, List I," or does it include Acts of the Federal Legislature which fall under paragraph 114 : "The Federal Legislature" (I drop out the unnecessary words) "will have concurrent powers to make laws with respect to the matters set out in Appendix VI, List III." Both are within the definition "Act of the Federal Legislature which applies to that Province." ?—It will refer to both.

13,047. Which of these two do you intend, or do you intend that both these, come within the provisions of paragraph 125 ? My reason is that if you intend both these Acts to come within the definition "Act of the Federal Legislature which applies to that Province" no difficulty arises at all ?—They both come within the first four lines of paragraph 125.

13,048. Then "every Act of the Federal Legislature" means and includes an Act of the Federal Legislature in the concurrent field also ?—Yes, but the difference of dealing with them is that in the case of the Federal field the Federal Government has under our proposals the power to give a direction to the Provincial Government. In the case of the concurrent field there is no power to give a direction ; there is, however, an obligation under the Constitution upon the Provincial Government to carry out the Act of the Federal Government.

13,049. I follow that, but my difficulty is that if, as you say, "Act of the Federal Legislature which applies to that Province" in the fourth line includes both the Acts, how can you say that the next two lines : "the authority of the Federal Government will extend to the giving of directions" can only apply under one of the two Acts ?—That was just the point I tried to explain in my opening statement. The object of my opening statement was to admit that the drafting of these two paragraphs is obscure, and I would ask Mr. Jayaker to read the two paragraphs in connection with the statement which I made at the beginning of our proceedings to-day.

13,050. Thank you. But as to the last two lines, "the authority of the Federal Government will extend to the giving of directions," if we accept your interpreta-

tion that that only applies to the Act under paragraph 111, namely, the Act of the Federal Legislature in the Federal field, then it must be admitted that there is no corresponding provision for giving directions with regard to the Act of the Federal Legislature in the concurrent field ?—That was just the point I emphasised this morning.

13,051. Have you any objection to giving the Federal Government the power to give directions apart from sanction ?—That is just the point that was raised many times this morning.

13,052. I am not talking of sanctions ; I am not talking of the power of punishment. I am only asking, limiting it to the power of giving directions ?—I know, but it was just that point that I thought I had dealt with at very great length this morning and earlier this afternoon. I hoped I had made it clear that I thought it was wiser to draw a distinction between these two fields.

13,053. I follow your argument about the objection against giving power to the Federal Government to implement its legislation by enforcing by some penal sanction, but I am asking whether you have an equal objection to giving to the Federal Government the power to give directions ?—I have not an equal objection, but I did hope I had made it clear that I saw a difference between these two fields, and I thought, on the whole, it was better to leave the obligation under the Constitution to operate in the one case, and in the other case to have the explicit directions of the Federal Government.

13,054. The difficulty I feel is this : If you turn to page 118, the list, item No. 74, one of the duties of the Provincial Government will be "The administration and execution of federal laws on the subjects specified in List III." Therefore, you have cast a duty on the Provincial Government to administer and execute Federal laws in the concurrent field. If you have put this duty on the Provincial Government there must be some body who has a right to see that this duty is carried out ?—I am afraid I cannot really add anything to what I have said on this point. Mr. Jayaker will see that

I have dealt with it at very great length to-day.

13,055. Then I will not pursue it any further. Then, coming to the list to which attention was invited in great detail by Mr. Zafrulla Khan, do you accept his suggestion which ran through all his questions, that taking List III, page 119, as I understood, his suggestion was that there is hardly any subject in that list which requires that the Federal Government should have the power of implementing its legislation. Do you accept that suggestion?—I would not say that I accept the suggestion, or that I dissent from it. I will look into the list item by item again after what Mr. Zafrulla Khan has said, but, speaking generally, I would agree with him that if adequate provision was made in the Federal Statutes, it might be possible for all the items from 1 to 10 to be tested and safeguarded in courts of law.

13,056. Take Item No. 20: "The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising in another Province." Do you think that the remedy which you have in mind will be an adequate remedy for the enforcement of this right?—I think it might be. I should like to look into the case in greater detail. I think it would depend very much as to what facilities there were for starting an action, and so on.

13,057. Now, going back to paragraph 125, I just want to ask you one question about that. If you turn to paragraph 114, sub-paragraph 2, it says: "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." There is no provision in the White Paper imposing such a limitation upon the power of the Federal Legislature with reference to Acts in the Federal field?—I am not quite sure whether I have followed your question.

Mr. M. R. Jayaker.] The power of the Federal Legislature in the concurrent field to pass laws is limited by this fact that it cannot impose financial obligations on the Province under paragraph 114, sub-paragraph 2.

Marquess of Salisbury.

13,058. But that only has reference to List III?—Mr. Jayaker, I cannot say that a case of that kind would arise, for this reason: All the Federal services will be paid for by Federal revenues.

Mr. M. R. Jayaker.

13,059. And the Federal Government will employ its own agents?—In some cases the Federal Government will employ its own agents. In some cases it will employ the Provinces as its agents, and in the second case it would reimburse the Provinces for the Provincial expenditure.

13,060. There is no limitation of that kind on the power of the Federal Legislature in the Federal field?—No, there is not.

Mr. Zafrulla Khan.

13,061. If Mr. Jayaker would excuse my intervening, with regard to Federal subjects, as the administration of those subjects is also Federal no such limitation is necessary because legislation on purely Federal subjects, if it involves any expenditure, will involve expenditure on the Federal field which must be provided for by the Federation?—That is just what I said.

Mr. M. R. Jayaker.

13,062. I understand the reason; I only wanted to know whether in fact there was any such limitation on the power. You are aware that under the existing law and under the Government of India Act to which your attention was invited by Mr. Zafrulla Khan, in the Schedule to the Devolution Rules (I am asking your attention to Schedule No. 1 to the Devolution Rules under the heading: "Central Subjects") you will find one of the Central Subjects at the present time is Item 16: "Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure," and Item 30: "Criminal law, including criminal procedure." Under your new list both these items have been relegated to the concurrent list?—Yes.

13,063. Having regard to that fact, do not you think the necessity for leaving in the hands of the Federal Government some power to see that the solidarity so far attained in British India in the

maintenance of civil law and all other things relating thereto, and similar solidarity under the administration of criminal law is maintained in the new Federation?—That is just the very reason why we include it in the concurrent list. It is essentially one of those cases in which uniformity is very necessary in the matter of legislation. The administration is Provincial, but the legislation is concurrent.

13,064. My difficulty was this (I am sorry to press you again on the same point) that if you are unwilling to give the power into the hands of the Federal Government to implement its laws, how is this uniformity to be attained?—I think it will in practice be attained. It is to

the advantage of British India to attain it. At present the administration is Provincial. What I am sure we have got to avoid is a blurring of responsibility, and, when once law and order have been made a Provincial subject, some kind of dyarchy arising in the field of law and order. That is why I appear to be so loth to accept any suggestions that would carry our proposals further in the way of giving the Centre greater coercive powers.

Mr. M. R. Jayaker.] May I pursue my questions next time?

Chairman.] I shall return to you, Mr. Jayaker, when we come back to this subject on Thursday morning.

(The Witnesses are directed to withdraw.)

(The Secretary of State then proceeded to make a Statement on Burma, which is published separately (Record 6).)

Ordered : That the Committee be adjourned to to-morrow at five o'clock.

12th October 1933.

PRESENT :

Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Ker (Marquess of Lothian.)  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutchison of Montrose.  
Major Cadogan.  
Sir Austen Chamberlain.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
Sir Hubert Carr.  
Lieut.-Colonel Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.  
Mr. N. M. Joshi.

Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*] The proposal this morning, subject to the convenience of the Committee and of the Secretary of State, is that we should renew our examination of the Secretary of State upon "Administrative Relations" and that we should then take the next subject, "Property, Contracts and Suits."

*Marquess of Zetland.*] Will you tell us the numbers of the Proposals, my Lord Chairman ?

*Chairman.*] "Administrative Relations," paragraphs 125 to 129 ; "Property, Contracts and Suits," paragraphs 130 to 135.

*Marquess of Zetland.*] Thank you.

*Mr. M. R. Jayaker.*

13,065. Secretary of State, I was asking your attention to the provisions of paragraph 128. There, Federal purposes are spoken of. I take it that those Federal purposes will be with reference to subjects on which the States have come in the Federation ?—The answer is Yes.

13,066. And some of these Federal purposes would be outside the reserved subjects ?—Yes.

13,067. Now, if that is so, I imagine that the phrase "the Governor-General will be empowered" means the Governor-General acting on the advice of his Ministers so far as Federal purposes outside the reserved subjects are concerned, if you turn to the definition of the expression "Governor-General will be empowered" at page 39 ?—As the proposal stands it is at the Governor-General's discretion. When we have discussed the question before, we took the view that it was a point to which the States attach some importance. That is the reason why it is at the Governor-General's discretion rather than on the advice of his Ministers.

*Marquess of Salisbury.*] We are right, are we not, in thinking that whenever the words "in his discretion" or "at

his discretion" are not used, the Governor-General will always be acting by the advice of his Ministers ?

*Mr. M. R. Jayaker.*

13,068. That is what I was asking attention to, at the bottom of page 39, the footnote ?—I would not like to give a general answer. I think, speaking generally, that is so, but there may be one or two cases in which owing to the drafting it is not quite clear.

13,069. Then, following the point further, if these Federal purposes are with reference to Federal subjects outside the reserved subjects, why should it not be the Governor-General acting on the advice of his Ministers, because it is a transferred Department ?—The answer is just the answer I have given, namely, that we did gather that the States attached importance to this point ; that is the reason why we have drafted it in this form. Perhaps, later on, the representatives of the States could give their view upon it.

13,070. Are you not likely to blur the line between paramountcy, by making the Governor-General act at his discretion on questions of this character ?—I think there is that risk. It is one of those difficult points upon which there is a good argument to be made on both sides.

*Mr. M. R. Jayaker.*] Because, as you added on the last occasion, you said that in the enforcement of these Federal purposes in the last resort the Governor-General will bring his pressure to bear under the heading of paramountcy if there is a refractory State which declines to carry out these purposes. I am therefore asking whether, having regard to these considerations, you are not blurring the line between paramountcy and the actions of the Governor-General under paragraph 128.

*Marquess of Salisbury.*

13,071. I should have thought, if I may say so, it would be more convenient that

wherever paramountcy is involved it should be the Viceroy and not the Governor-General?—That, Lord Salisbury, is a different point.

13,072. I apologise. Is it so?—This is a point where paramountcy is not involved; this is a point arising out of the Federal field.

Mr. M. R. Jayaker.] I am not referring to the Viceroy acting. I see the distinction. I am speaking of the Governor-General enforcing Federal purposes by invoking his powers under the domain of paramountcy.

Sir Austen Chamberlain.] Will Mr. Jayaker say if I am right in understanding that he is speaking in connection with paragraph 129?

Mr. M. R. Jayaker.

13,073. Paragraph 128. The Secretary of State said the Governor-General at his discretion will be empowered. Then I am asking if that is so and the enforcement of these Federal purposes by the Governor-General at his own discretion will be by bringing pressure upon a refractory ruler under the line of paramountcy, whether the line is not likely to be obliterated?—I should very much like to hear the views of the States' representatives upon a point of this kind. I admit there is a strong argument to be made on both sides.

13,074. Then I will not press the point further until we hear the Indian States' representatives. Then, may I proceed to another point under that paragraph, the last two lines: "But it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself," etc. Supposing this adequate standard of administration does not satisfy the Governor-General, will he be entitled to put in Federal agents so that that adequate standard of administration is maintained?—We do not specify any details. It is difficult to specify details because I think the Governor-General's actions must depend so much upon the gravity of the case. It also depends upon to some extent methods adopted in the Instruments of Accession.

13,075. You leave him latitude by the word "otherwise" I imagine?—We leave him latitude.

Sir Austen Chamberlain.

13,075A. I am afraid, I did not catch all the questions, and I am therefore not clear in my mind what is the position as seen by the Secretary of State. May I ask this question: Does he intend the Governor-General, under Section 128, to act as the executive of the Federal Government, or to act in his discretion?—I have just said at his discretion, but I have admitted that it is one of those difficult points upon which there are arguments upon both sides.

13,076. But, the Secretary of State will see that in paragraph 126 and in paragraph 129 the discretion of the Governor-General is expressly stated?—Yes; I admit it is a point of drafting.

Marquess of Salisbury.

13,077. If it is only drafting, it is not worth while dwelling upon it?—In paragraph 128, even though it is inadequately drafted, we do contemplate as at present advised it is also at the Governor-General's discretion, but, as I say, I should like to have the views of the Committee and of the Delegates upon that point.

Sir Akbar Hydari.] I believe the Indian States would like the power to be to the Governor-General at his discretion.

Marquess of Salisbury.

13,078. You see if you take the ease where the terms of the States Instrument of Accession do not provide anything then the words would read "The Governor-General will be empowered to make agreements with the ruler of any State for carrying out any Federal purpose." That is to say, as the words stand, unless the words "at his discretion" were inserted, we should have assumed that he would be acting simply ministerially on the advice of his Ministers, but then we go to paragraph 129 where it appears that the Governor-General would be empowered at his discretion, that is to say, without the advice of his Ministers, to issue instructions ensuring that the Federal obligations of the States are duly fulfilled, which seems to cover exactly the same point, so, in paragraph 128, he acts ministerially by his Ministers' advice;

in paragraph 129 he acts at his discretion with his responsibility only to the Secretary of State?—Yes, I admit there is an error in drafting. It is intended at present that both should be at his discretion. Paragraph 128 deals with the making of agreements; paragraph 129 deals with the pressure that the Governor-General should put upon the State to see that those agreements are carried out.

13,079. If it is a matter of drafting I say nothing more?—But it is a difficult point, and I will bear in mind what Mr. Jayaker has said, and we will look into it again.

*Mr. M. R. Jayaker.*

13,080. I take it that the Federal obligations are Federal obligations arising in the transferred field also?—Yes, that is so.

13,081. Then the difficulty I want to put before you is that under the combined effect of paragraph 128 and paragraph 129, there will be a greater and greater tendency to turn the office of the Governor-General at his discretion into an executive office to carry out the behest of the Federal Government, and he will be drawn into politics. You have maintained the Viceroy detached from the States, I quite see that, but under the operation of paragraphs 128 and 129 there will be a greater and greater tendency to convert the Governor-General's post into an office to carry out in an executive capacity whatever the Federal Government wants him to do with reference to the States, and, do you think it is a good position for the Governor-General to occupy?—I admit there is that risk. On the other hand, there is the practical question as to which is the best way of getting the Federal obligations carried out, and it is that practical consideration that has been chiefly in our minds when we make these proposals. We have felt that upon the whole the Governor-General, acting at his discretion, is more likely to have influence with the States than the Governor-General acting on the advice of the Federal Government. There is no more in our proposals than that.

13,082. No; I am only putting my difficulty to you?—Yes, I know; I am putting mine.

13,083. He will be the mouthpiece of the Government without having any control over the Transferred Departments; that will be the position. He will simply be an automation required to be put into force for carrying out the dictates of his Ministers. That is likely to be the position. I want you to guard against that; that is all?—I will take those points into account. The Governor-General, acting at his discretion, would be much more than an automation, but there are these difficulties on both sides, and the practical question to which I would ask the Committee to devote their attention is, which is the best method for getting the will of the Federal Government carried out.

*Marquess of Salisbury.*

13,084. It is not merely a matter of form. The Secretary of State does not mean that. It is not merely a different way of stating the Governor-General acting by the advice of his Ministers. In one case where it is not at his discretion I understand the conception of the White Paper is that the Governor-General would always do exactly what his Ministers advise. I do not know whether that is a good plan, or a bad plan, but that is the conception in the White Paper. When you put the words "at his discretion" it does not mean any longer that he will do what the Ministers advise, but he will do what he himself thinks right. The two things are quite distinct?—I admit the two things are quite distinct, and I hope anything I have said has not suggested that they are not distinct, but I contemplate that in the Federal field, as distinct from the field of special responsibilities, and as distinct from the field of paramountcy, certainly, normally, the Governor-General, whether he is acting at his own discretion, or on the advice of his Ministers, would be working in collaboration with his Ministers, and it is for the Committee to consider whether in the Transferred field it should be at his discretion, or on the advice of his Ministers.

13,085. The Secretary of State will recognise that it is a very difficult matter, because many people contend that, as a matter of fact, the Governor-General would nearly always be acting by the advice of his Ministers and that

the words "at his discretion" do not come to very much in practice, but I understood the contention of the Government was that they were all-important?—Yes, and Lord Salisbury was only this moment arguing that they were very important, and that one differed very much from the other. I agree with him.

13,086. I am only trying to find out what is the intention of the White Paper, and I understand the Secretary of State says the words "at his discretion" would not amount to very much. The Governor General whether he was acting at his discretion or not would really act on the advice of his Ministers?—Lord Salisbury must not put these very unfair comments.

13,087. If I overstate it, perhaps the Secretary of State will correct me in a moment?—I do very much resent a wide generalisation of that kind being applied to an answer that I have given upon a very technical and difficult point. I was dealing with the Governor-General acting, not in the field of his special responsibilities, or in the field of paramountcy, but in the field of transferred subjects, and I said here it was a question for the Committee to consider whether it was better in this case that he should act at his discretion, or on the advice of his Ministers. I have never suggested that there is not a great difference between the Governor-General acting at his discretion, and on the advice of his Ministers.

Marquess of Salisbury.] I am very much obliged.

Mr. M. R. Jayaker.] In all my questions I have kept that distinction clear in mind. I am not blurring the two, but I only want to point out the difficulty which I want the Secretary of State to examine.

Mr. Manubhai Mehta.] My submission would be that the language in paragraphs 126 and 128 ought to be interpreted similarly as meaning that if in paragraph 126 the Governor-General is empowered to act at his discretion, because he has a special obligation to maintain the peace and tranquillity of the country, similarly in paragraph 128 also the Governor-General has special responsibilities even as regards the Indian

States. Mr. Jayaker referred to the Transferred subjects, but, even as regards Transferred subjects, ultimately there will be the question of enforcement, and, if you will kindly look at the language of paragraph 128, it says, "The Governor-General will be empowered and, if the terms of any State's Instrument of Accession so provides, will be required." First he is empowered; in the other he is required, meaning that if his special responsibilities want that any particular agreement should be entered into he is empowered, and there it must be at his own discretion; while he may act on the advice of his Ministers (he *may* I said) in the transferred field, and there it is required; so I would interpret, both in paragraphs 126 and 128, the Governor-General to be acting at his discretion.

Mr. M. R. Jayaker.] The answer to that, Sir Manubhai, is that in paragraph 126 grave menace to the peace and tranquillity of India are admittedly the special function of the Governor-General under paragraph 18. We are now referring, as the Secretary of State has admitted, to the fact that paragraph 128 covers Departments which are purely transferred Departments. With reference to such Departments the Governor's responsibility can only arise under Paragraph 18 (f) "The protection of the rights of any Indian State," but, with regard to the expression "protection of the rights of any Indian State" you find a complete explanation of what that means in paragraph 28 of the Introduction. That explains what that paragraph means, and, if you take the explanation in connection with this wording, it does not include rights of this character at all. Rights of enforcement of Federal purposes on the States is not included according to that explanation in paragraph 18 (f).

Sir Austen Chamberlain.] The Secretary of State used the words, and perhaps he could therefore answer my question: In what sense is the phrase "transferred subjects" now being used by him and others. Hitherto transferred subjects, I think, has generally meant subjects which had been transferred or would be transferred to the Provinces.

Marquess of Reading.] That is right.

*Sir Austen Chamberlain.*

13,088. We are now talking, as I understand, of transferred subjects in quite a different sense?—I was using the term “transferred subjects” in the sense of all the Federal subjects other than those reserved to the Governor-General, namely, Defence, the Ecclesiastical Department, and so on.

13,089. Federal subjects other than those subjects which are reserved to the Governor-General?—Yes.

*Mr. M. R. Jayaker.*

13,090. Transferred to Ministerial responsibility?—Yes.

*Mr. Y. Thombare.*

13,091. Then the expression “The rights of an Indian State” used in Proposal 18 (f) is very wide. It cannot necessarily be restricted to rights in the Non-Federal sphere, and, therefore, the Governor-General has a special responsibility also in regard to the transferred subjects?—I would not go so far as to accept a very general statement of that kind.

*Mr. M. R. Jayaker.*

13,092. I think there is great danger if you were to interpret the words “protection of the rights of any Indian State” in the way Mr. Thombare is asking you to interpret them, namely, that it includes also those subjects which are transferred to Ministerial control. You will create an impossible position?—That is why I put in a word of caution at once.

*Mr. Y. Thombare.]* But the wording itself is very wide “The rights of any Indian State.”

*Mr. M. R. Jayaker.]* That is all I ask, my Lord.

*Lieut.-Colonel Sir H. Gidney.*

13,093. My Lord Chairman, I have only one question to ask the Secretary of State. It refers to the relationship between the Federal Government and the units so far as the minorities are concerned. If the Secretary of State will pardon me—he will correct me if I am wrong in my conception of the situation

—I gather from paragraph 18 that the Governor-General has a special responsibility in safeguarding the legitimate interests of the minorities. In paragraph 70 the Governor has a similar power. I also notice that on page 36 of the First Round Table Conference Report, Head C: “Provincial subjects subject to legislation by the Indian Legislature,” that Item 47, on page 36, refers to the Control of Services, and it states as follows: “As regards public services within the Province other than All-India Services.” Then taking a reference to the Services Sub-Committee on page 67 of the First Round Table Conference, paragraph 5 (2), it states that the Provincial Public Services shall be under the control of or the recruitment by the Public Services Commission. I want to draw the Secretary of State’s attention to the last paragraph, which reads as follows: “The Governor shall before considering any appeal presented to him against any order,” etc., etc., “consult the Commission.” Secretary of State, I only want to have my mind clear on this matter, and it is to clear this question: In the event of a Minister or the Ministry or the Governor deciding adversely against a minority community what appeal would that minority community in a province have in such an event?—I do not offhand see the relation of this point to these paragraphs, but anyhow, be that as it may, my answer would be that the Governor in this matter would be acting as the agent of the Governor-General, and I assume that the Governor-General would look into a case like that if there were a feeling of grievance, but there is nothing in the nature of a formal appeal.

13,094. Then does that mean, Secretary of State, that the special responsibility of the Governor-General cannot be enforced?—Not at all; it can be enforced.

13,095. In what way, may I know?—He can give a direction to the Governor and the Governor has to carry it out.

13,096. Supposing the Ministry does not carry out what the Governor tells them, or the Minister in charge of the Portfolio does not?—Then the valid order in the Province is the order of the Governor.



13,097. I am just trying to clear my mind : In the event of a Minister refusing to carry out the Governor's order in the protection of a minority, how can the Governor-General see that his orders are carried out ?—He gives a valid order, and the machine of government carries it out. If the machine of government does not carry it out then there is a breakdown in the constitution.

13,098. I may be wrong—forgive me pressing the point—but I think when Sir Austen Chamberlain asked you a question a few days ago you almost admitted that the Governor-General had no executive powers in certain fields, such as the concurrent field, and other matters. Has the Governor-General an executive power here to see that his orders are carried out ?—Certainly. The two questions are totally distinct. In the case of the concurrent powers it was an entirely different state of affairs. There we were dealing with a state of affairs in which the administration was Provincial—in which the subjects were mainly Provincial, but in which there was a necessity of having some kind of uniformity. That had nothing whatever to do with the field of special responsibilities of the Governor or of the Governor-General. In the field of the special responsibilities the only valid order would be the order of the Governor and the order of the Governor-General in the event of a difference of opinion of this kind.

13,099. Do I gather from that, Secretary of State, that, taking the past as the criterion, where the Instrument of Instructions gave the Governor special powers which have never been carried out in the direction of minorities, then, that the matter rests with the Governor and if the Governor-General orders it he has to carry it out ?—Yes, certainly, and it is a statutory obligation.

13,100. Then may there be any appeal from a minority community against a Governor's adverse decision ?—I have just given an answer to Sir Henry ; it is no good my giving the answer time after time. I have just said there is no formal appeal.

13,101. Then how could the grievance be redressed ?—The Governor-General could redress them if he thought fit.

What sort of appeal has Sir Henry in mind ?

13,102. Supposing, as recently happened in Bengal where communal differences were created, the community themselves would have no appeal to the Governor-General but only to the Governor ?—There is no right of formal appeal ; I have just said so.

13,103. Then do I gather that the safeguards of minorities are separate in the Provinces as in the All-India Services ?—No ; the chain of responsibility is : Governor, Governor-General, and British Parliament.

13,104. I am very sorry—maybe I am dense—but what I really did want to know was how could one get to the Governor-General ?—I imagine a Memorial would be sent to the Governor-General in a case of that kind.

Lieut.-Colonel Sir *H. Gidney*.] Thank you. I do not want to ask any more questions.

*Mr. N. M. Joshi.*

13,105. May I ask, my Lord Chairman, a question as regards the statement which the Secretary of State made last time, that a Sub-Committee may be appointed to go into the details of certain questions ? May I know what the exact idea is ?—I would be ready to make any arrangements that suited the Committee and the Delegates. I would suggest that those Members of the Committee and the Delegation who are specially interested in this question should give in their names and I then could arrange a suitable meeting with the experts present, but I would make any other arrangements that suited better. That is what was in my mind.

13,106. Will the proceedings of that Sub-Committee be formally recognized by the Committee ? Will they be published ?—That is entirely for the Committee and the Delegates to settle. I have no view one way or the other ; I do not mind one way or the other.

13,107. As regards the main question in Proposal 125, I do not wish to examine you in detail because you have replied to the question of Sir Austen Chamberlain, that you will consider whether the Federal Government should have power

in some matters at least to give directions or not?—Yes.

13,108. If the Federal Government does not possess the power of giving directions to the Provincial Governments, then, in some cases, legislation passed by the Federal Legislature will really be legislation of optional application to Provinces, if the Provinces do not give effect to the legislation and the Federal Government has no power to give directions?—The position is not quite that, Mr. Joshi. The legislation would not be optional, it would be the only valid law in the Province.

13,109. Yes, but where the legislation requires some measures to be taken by the Provincial Government, to that extent it will be of optional application?—It remains the obligation of the Province to carry it out. It is not optional for the Province to carry it out.

13,110. If you take away the power of giving directions under what section do you consider that there would be an obligation on the Provincial Government?—Under Proposal 125.

13,111. No. Under 125 there is no obligation on the Provincial Government to carry out the measures?—Yes; it is intended and we will make it clear in subsequent drafting that there should be an obligation. The point of difference that we discussed at some length the other day was whether in the concurrent field you should go further than stating an obligation, and whether you should give the Federal Government the power of issuing instructions. That point I said I would reconsider in view of the discussion that took place, but in either case there would be an obligation on the Provincial Government to carry out legislation of that kind.

13,112. Last time you expressed some apprehension that if the Federal Legislature legislates on concurrent subjects, in some cases there is a danger of the Federal Legislature passing legislation against the sentiments and feelings of the Provinces. The question which I want to ask you is this: Considering the constitution of the Legislatures which are based upon mostly territorial constituencies, do you think there is any real danger of the Federal Legislature

passing measures which are against the Provincial sentiments and feelings?—I hope that there would not be; at the same time, one has to remember the fact that one Province in some respects differs from another Province and that, taking the case of social legislation, the case, I expect, that is very much in Mr. Joshi's mind, you have got to take into account these differences of social conditions. You have also got to take into account the question of expense. One has got to avoid, if it is possible to avoid it, the Federal Government passing legislation that will impose a very heavy charge upon Provincial revenues. Those are the difficulties that surround this question.

13,113. As regards the expense, it is a different question, and that is provided for by Proposal 114?—Yes.

13,114. I was dealing with questions which do not involve expense. I fully realise that it is quite possible that the Federal Legislature may pass legislation which is totally opposed by one or two Provinces?—Yes.

13,115. That is likely to happen. But is it not true that it is only in such cases that the usefulness of the Federal Legislature can be expressed? I shall give you a more definite statement: That the usefulness of the Federal Legislature is of two kinds—first, to bring uniformity where all the Provinces want uniformity; and, secondly, to bring uniformity where not all the Provinces, but most of the Provinces, want uniformity and one or two Provinces take an obstructive attitude. If one or two Provinces take an obstructive attitude and most of the Provinces want legislation, it is in such cases that the usefulness of the Federal Legislature really is expressed and is valuable by a sort of coercing of the obstructive Provinces?—I quite admit the strength of Mr. Joshi's argument. It is particularly applicable to labour questions. The practical difficulty is the difficulty of forcing an autonomous Province to do what it is determined not to do, and, whilst I fully realise the necessity of safeguarding uniformity of labour conditions, I do see great difficulty in providing any practical provisions that are going to force a Government to apply

legislation that it is determined not to apply. I hope the case will not arise, but if the case did arise I cannot see what any sanctions are really going to effect. I think what one can hope is that by passing the concurrent legislation you create a general public opinion in India upon the subject, and that it makes it very difficult for one Province to hold out, but when it comes to going further and applying sanctions, I cannot see what kind of sanctions you can effectively apply.

13,116. I would like to ask you a question about this subject of financial burden, as stated in Paragraph 114. Last time when you gave evidence you stated that the second part of that Paragraph 114 requires some modification. The second part of Paragraph 114 reads thus: "The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces." And you stated last time that this requires a little modification. May I ask you whether you have considered what form the modification will take?—As the proposal stands now, it would enable a single Province to hold up any social or labour legislation if it involved any kind of expenditure upon the Provinces even though every Province in India except one was in favour of that legislation. I think that goes too far; I do not think you ought to give a *liberum veto* to a single Province to hold up legislation of that kind; I think therefore it ought to be so modified as to make it possible for legislation of that kind to be passed, always with the proviso that I made just now, that I cannot see what sanction you can apply to a Province if the Province is determined not to carry out that legislation.

13,117. I am not asking about the Centre now. I want to know whether there is any definite formula which you have thought out giving certain freedom to the Federal Legislature to pass legislation involving some expenditure?—The difficulty Mr. Joshi is this: How can you compel a Provincial Legislature to vote the necessary supplies? The Provincial Legislature is autonomous. This is a case in which the administra-

tion is Provincial. Is there any practical way of forcing a Provincial Legislature to vote the money?

13,118. No. As I read the Second Part, there are two ways in which the financial burden will be thrown upon the Provinces by a Federal Legislature, first by putting an obligation upon the Provincial Legislature or the Provincial Government to spend some money of the Provincial Treasury by Grants, and secondly by putting some obligation upon the Province by which the work of the staff may be increased, and that may be considered as a financial obligation. Now, cannot the draft make it clear whether it refers only to the Provinces being freed from obligation to make any grants from the Treasury, or whether it should apply even in the case of some additional work to the staff?—I would have thought that with any important proposal it will come to very much the same thing, will it not, that an increase of staff would mean an increase of expenditure?

13,119. Quite possibly; I therefore wanted to know whether you had thought about some formula by which the modification which you intended to make would be made effective?—The kind of modification I had in mind was a modification allowing proposals of this kind to be introduced and to be passed as Federal Legislation; but I have not been able to see any effective way of going further, and making certain that a recalcitrant Province would find the money. If Delegates and Members of the Committee can suggest such a way without striking at the very root of Provincial autonomy, I should be very grateful.

Mr. Morgan Jones.

13,120. That was the point you had intended the Sub-Committee to discuss, amongst others, was it not, Sir Samuel?—No. I was thinking more of the lists, whether particular subjects should come into the concurrent list and so on.

Marquess of Zetland.

13,121. May that be clear? Does the Secretary of State tell us that it is his intention to alter the second paragraph of proposal 114?—I think it goes too

far at present ; it would stop the introduction of labour legislation altogether. One Province could stop it. I think that goes too far.

13,122. It is, therefore, your intention that that should be altered ?—Yes. I will try to think out a formula. If I can get it ready in the next few days or few weeks, I could bring it to the notice of the Committee.

Mr. N. M. Joshi.

13,123. May I ask one general question on paragraphs 128 and 129 ? You stated that in order to meet the wishes of the States you would give power to the Governor-General, not acting on the advice of his Ministers, but the Governor-General, acting at his discretion even in cases where the Federal Government has to exercise some authority over Indian States. The question which I want to ask you is this : You are trying to meet the wishes of the Indian States, but may I ask you whether you have considered what will be the effect on British India if British Indians find out that constitutionally although the Indian States have joined the Federation, the Federal Government as a Government has absolutely no authority over the Indian States as regards matters which are transferred to the Federal Government, because, in so far as you give the power to the Governor-General at his discretion, the Federal Government has no authority. It is the Governor-General at his discretion who will have authority. I want to know whether it will not be the feeling of people in British India that although the Indian States have joined the Federation the Indian States are in no way under the authority of the Federal Government ?—But that would not be the case.

13,124. Why ?—It would not be the case for this reason : That paragraph 128 deals with cases in which there is no Federal agency in the State, by agreement. There will, it is presumed, be a Federal agency for many Services in many States. For instance, I think the case of Posts and Telegraphs is a case in point. Mr. Joshi's general conclusion, therefore, is much too wide. Whether public opinion in British India

approves or disapproves of certain rather technical provisions for dealing specially with the States I could not express an opinion upon. What I am chiefly interested in is the most effective way of getting the decisions of the Federal Government carried out. My advice so far has gone to show that this is the most effective way of doing it. At the same time, I have admitted the strength of the arguments that have been used this morning on the other side and I am perfectly prepared to look into them again.

13,125. Do you really mean, then, that although the wording of the Clause places the Governor-General at his discretion in the transferred field, it should be the Governor-General acting on the advice of the Ministers ?—I think I have stated my position this morning, and it is this, that I still think that paragraphs 128 and 129 as at present drafted are the most effective way of getting the Federal Government's will carried into effect, but I will consider the points that were urged by Mr. Jayaker this morning and take into account his very strong arguments.

13,126. Now, as regards paragraph 129, I do not know why the power should be given to the Governor-General at his discretion to see that effect is given to the measures proposed by the Federal Government and not to the Governor-General acting on the advice of his Ministers. What is the difference between the Governor-General making arrangements for inspection and the Governor-General having power to see that effect is given to the proposals of the Federal Government ?—Here again we thought that it was the most effective way in which the Governor-General could bring his pressure to bear upon a recalcitrant State. It was the view generally accepted so far as I remember at the last Round Table Conference. If Mr. Joshi would look at page 34 of the Proceedings of the last Round Table Conference he would find at the end of the Report this sentence : "Finally it was agreed that power should rest in the Governor-General personally"—that means at his discretion—"to issue general instructions to the States' Governments for the purpose of ensuring that their obligations to the Federal Govern-

ment specified in this paragraph were duly fulfilled."

13,127. Apart from what the Round Table Conference Report said, may I ask this question: If the Governor-General at his discretion is introduced even into the transferred field, constitutionally speaking, apart from the practical effect, even legislation passed by the Federal Legislature will be of optional application to the States. I am not suggesting what the practical effect will be, but constitutionally speaking the legislation is only of optional application to the States?—That is not so at all. The legislation is the authorised Federal legislation of the Federation to which the States have acceded and to which the States have, to that extent, surrendered their sovereign powers. There is no question of option about it.

13,128. True, but, if only the Governor-General at his discretion has the power to see that it is enforced, the application so far as the Central Government is concerned is optional?—That is not the conclusion I draw.

Mr. N. M. Joshi.] It is the conclusion which ordinarily people will draw, if you say the enforcement depends upon the Governor-General at his discretion. My Lord, I have no more questions to ask.

Dr. B. R. Ambedkar.

13,129. Secretary of State, I just want to draw your attention to the present position of the concurrent field under the Government of India Act. I am anxious to do so because it was suggested to you that under the present Government of India Act only certain subjects or parts of certain subjects are made subject to the Central Legislature. The point that I wish to draw your attention to is that, first of all, there are some Provincial subjects which are made specifically concurrent under Part II of Schedule I to the Devolution Rules?—Yes.

13,130. While subjects although they are made Provincial are controlled by the proviso that they are subject to the Central Legislature?—Yes.

13,131. I have made a computation that out of the 51 subjects which are included in Part II of the Schedule

to the Devolution Rules, 41 are made expressly subject to the Central Legislature, or to rules made by the Central Government or the Secretary of State. That is one thing. The second thing is this: That all Provincial matters are subject to concurrent jurisdiction by the Central Government under Section 67, Sub-Clause (2) of the Government of India Act by previous sanction. Although any subject is regarded under Part II as a Provincial subject, it is none the less open to the Central Government to legislate upon the whole of that Central subject provided previous sanction is obtained from the Governor-General?—Yes.

13,132. On the side of the Provincial Government control is exercised by the Central Government on the concurrent field under Section 80 (a), whereby the local legislature of any Province may not without the previous sanction of the Governor-General make or take into consideration any law for regulating any Central subject or regulating any Provincial subject which has been declared by rule or law as being subject to the Central Legislature, or affecting any power expressly reserved to the Governor-General in Council by the law for the time being in force. That is the present position?—Yes.

13,133. That is practically all of the Provincial field as also the concurrent field provided the sanction of the Governor-General is obtained?—Yes; that is so.

13,134. Now under the present proposals the whole thing is completely altered. I mean the concurrent power of the Central Legislature is proposed to be taken away in most of the matters?—Except in the List 3, yes.

13,135. I want next to draw your attention to List 3. I am sorry I lost my paper which I completed, but I think I am right in suggesting that a great many of the subjects included in List 3 are to-day either exclusively Central or concurrent?—Yes, I think it might be said that a number of them certainly are.

13,136. Consequently it would be fair to suggest that under the present Government of India Act your concurrent List has always been treated as predominantly of All-India importance,

under the Government of India Act as it is to-day, they being included either in the purely Central List or in the concurrent List. My suggestion is that under the Government of India Act the field which is now concurrent was regarded in the Government of India Act as of All-India importance?—Yes; I think that generally is so. I think it is inevitable under a unitary form of Government.

13,137. Quite so. My suggestion, therefore, Secretary of State, is this: That it would not be quite correct to say that a field of legislation which was under the Government of India Act regarded as of All-India importance is administratively to be hereafter regarded as purely Provincial,—No. I should draw a great distinction between the conditions under a unitary form of Government and the conditions under a Federation in which the Provinces are autonomous. We are quite definitely changing the form of Indian Government from a highly centralised Government into a Federal Government.

13,138. But I am only talking about the importance of the subject, a subject which, up to 1901, was regarded as of All-India importance, could not all of a sudden cease to be of All-India importance and become purely a local matter. I am aware that a great deal of concession has to be made for the new Provincial Government; the fact that the Government of India has up to now been regarded as more than of local importance has always to be recognised?—I think it is very difficult to make such a comparison when it is admitted that the form of Government proposed is a very different type of Government. I think new conditions enter into the problem as soon as you move away from a unitary Government to a Government of Federation with autonomous Provinces.

13,139. I will not press the point further, but I wanted to draw your attention to the fact that these subjects have hitherto been regarded as of more importance than purely Provincial subjects?—I suppose, however, it would be fair to say that in most of them administration even under a highly centralised Government, has been Provincial.

13,140. Yes; subject to the control of the Centre?—There again, I do not think that Dr. Ambedkar's comment upon my answer quite covers the whole field. It would not cover the transferred field in the Provinces?

13,141. No; that is so. Next, I want to draw your attention to Proposal 125 and to Section 45 of the Government of India Act. Section 45 of the Government of India Act is what is called the Obedience Clause, and lays down that a Provincial Government shall be under the superintendence or the control in all matters relating to the Government and its Province and will also diligently and constantly inform the Government of India of its proceedings in all matters which ought in its opinion to be reported so as to give the required information. Now, what I would like to know from you, Secretary of State, is this: What is it that you wish to delete from the provisions and requirements of this Section 45? I see you do not want superintendence. That, of course, is obvious when the Provinces become autonomous. You want to retain direction only with regard to those matters which would be non-concurrent?—Yes.

13,142. And there is to be no control? Now the question that I want to ask is this: Do you desire that the Central Government should be kept informed of what is happening under the field of Provincial administration, and do you desire that the Central Government should have the power to call for information with regard to the administration of any Provincial subject, so that it may inform itself of what is happening?—No; we do not have any such general intention. We assume that as soon as you set up a Federal Government you must then have a definite allocation of powers between the Federation and the units. In many respects, the clearer you keep that division, the less likely it is that responsibility should be blurred, and the less likely it is that there will be incessant controversy between the two kinds of Government. Quite definitely, under our scheme—indeed, it is one of the basic principles of it—we now divide up these various duties between the Federation, the Provinces, and the Imperial Parliament.

Mr. N. M. Joshi.

13,143. May I ask a supplementary question? As regards the point of information raised by Dr. Ambedkar, I want to ask you this: In some cases, of the compilation of statistics relating to All-India will be valuable. Such, for instance, as figures of All-India as regards Education. At present, although education is a transferred subject, the Government of India issues an All-India Report. Will the future Government of India possess power to collect information as regards transferred subjects and spend money upon the compilation of an All-India Report?—Only within the specified Federal field; anything outside the Federal field must be done by agreement.

Mr. N. M. Joshi.] Education is not in the Federal field.

Lord Eustace Percy.] I am sure, Secretary of State, you are bearing in mind that in every Federation, for instance, in America, the research and statistical departments of the Federal Government go far beyond the Federal field?

Mr. N. M. Joshi.

13,144. For instance, in America, they do publish an Educational Report for the whole of the United States?—Yes. If Lord Eustace will look now at Appendix VI, List 1, he will see there that we have covered his point, that the Census and so on is included in the Federal field, and there, I think, we must consider the point of All-India statistics generally—statistics, that is to say, for the purpose of Federation.

Lord Eustace Percy.

13,145. I do not understand quite why it is necessary to limit it in that way. There is no reason why a Federal Government should not publish information and why its information should be entirely confined to the Federal field. It is not so in any other Federation I have ever heard of?—But, surely a Federal Government can only act for the purposes of Federation. A Federal Government has no *locus standi* outside the field of Federation.

13,146. Of course, it cannot publish a report on the intellectual and moral pro-

gress of India if the Provincial Governments will not supply the information, I agree, but that hardly need be anticipated?—I do not think there is any difference of opinion between Lord Eustace and myself; my comment was only directed towards keeping this kind of activity within reasonable limits. If a Federal Government constantly worried Provincial Governments for all sorts of information that had nothing to do with the Federal Government, then, I can foresee constant difficulties arising between them.

Dr. B. R. Ambedkar.

13,147. Might I give this instance which comes to my mind? Supposing, for instance, in a particular Province, criminal proceedings are taken against a foreigner and reference is made by his Government to the Government of India with regard to the proceedings taken against this particular foreigner in a Province, and the Government of India needs information in order to deal with the subject: Would the Government of India be in a position to require the Provincial Government to furnish information with regard to that subject?—Yes, and also to take action. It would come within the field of foreign affairs.

13,148. I submit that law and order would be a transferred subject?—That may be so, but foreign affairs have a special reservation. This Clause 125, which you are discussing now, I think, would cover that. Foreign affairs is a Federal subject. Under the second paragraph of Clause 125 the Federal Government could give directions to the Provincial Government.

13,149. I mean, you see the necessity of the Central Government obtaining such information as is necessary for its purpose?—Certainly, and I accept the need.

13,150. I thought I would draw your attention to it because I do not find the information in Proposal 125?—I think that presupposes obtaining the necessary information from the Provincial Government. It is intended to, anyhow.

13,151. Now, with regard to Proposal 114, there is a proviso tacked on to it that the concurrent power shall not be exercised so as to impose a financial

burden. What I would like to know is this: If there is a dispute that a particular proposal does impose a financial burden, one party contending that it does not, another party contending that it does, how is this dispute to be resolved? Largely and broadly, for instance, the Central Government proposes a new service to be carried on by the new Provinces, one could draw the conclusion that such a thing would impose a financial burden, but there might be cases on the border-line where there might be a dispute?—As the provisions stand at present, recourse would be to the Federal Court. That may not, however, be sufficiently comprehensive a method and, as I said the other day, we are considering the possibility of some kind of arbitral procedure to apply in cases that were not suited for settlement by the Federal Court.

Mr. M. R. Jayaker.

13,152. It would fall at present under paragraph 155 (i)?—Yes: the Federal Court.

Dr. B. R. Ambedkar.

13,153. There is just one more question I would like to ask you, Secretary of State, because I am not clear about it. What I want to know is this: With regard to these administrative relations, first of all, is the Central Government bound to employ the Provincial Governments as its agents?—Yes, in the concurrent field.

13,154. It is bound to?—Yes.

13,155. It cannot employ its own agents?—It is our intention that the administration in the concurrent field should be Provincial.

13,156. Subject to a question of whether its directions can be given or not—that is another matter?—Yes.

13,157. Then it would also follow that the Provincial Governments are bound to take up the work of the agency of the Central Government if they are called upon?—Yes, under the Federal law.

Marquess of Lothian.

13,158. Am I to understand you to say that the Federal Government cannot

create an agency in the concurrent field if it finds that it cannot get adequate co-operation from the Provinces, or do you expect the Provinces to do it?—Lord Lothian was not here when we discussed points bearing upon this at some length the day before yesterday. My contention then was that in the concurrent field the wisest course was to leave the administration provincial.

13,159. I just ask the question whether it would be prohibited—whether there was any inhibition on the Central Government in the last resort creating another agency if it chose to do it. There would not be any prohibition of that?—Provision 113 restricts the Federal administration to Federal subjects.

13,160. Yes?—That, incidentally, excludes the Federal administration from the concurrent field.

Mr. N. M. Joshi.

13,161. May I ask one question on that. If you look at Item 21: "Regulation of Medical and other Professional qualifications": this is concurrent. Under this it may become necessary to establish an All-India Medical Council. How can the Provincial administration be utilised for forming an All-India Medical Council? The Federal Government must possess some power to create its own machinery?—I do not think I have quite followed Mr. Joshi's point. Would he mind putting it again?

13,162. Item 21 is: "Regulation of Medical and other Professional qualifications." This will require the formation of an All-India Medical Council?—Yes.

13,163. An All-India Medical Council cannot be established through the Provincial administrations; it must be an organisation of the Federal Government?—I am not quite sure of Mr. Joshi's difficulty. The Medical Council would be created by the Federal Legislature, but would it be a Federal organisation?

Lieut.-Colonel Sir H. Gidney.

13,164. It is Federal now?—The point is new to me. It is a detailed point. If Mr. Joshi will let me look into it I will be glad to do so.



Mr. N. M. Joshi.

13,165. On the same lines, may I ask you also to consider whether the Federal Government will possess power to create an organisation for co-ordinating certain activities where even the Provincial Governments want co-ordination. I will give you an instance. Supposing all the Provincial Governments agree to have some Agricultural Council, as they have to-day, or they may agree to have an Inspector-General of Health in India, or they may agree to have a sort of Industrial Council—?—We have already covered this point, Mr. Joshi. We think that arrangements of this kind would probably come about by agreement, and if Mr. Joshi will look at Item 42 on page 115 he will see that we have included a provision to enable the Federal Government to undertake work of this kind.

Lieut.-Colonel Sir H. Gidney.

13,166. Secretary of State, do not you find it in List III, the Concurrent Subjects, on page 119. Item 21, in reference to the former question, the Medical Council body: "Regulation of medical and other professional qualifications"?—Yes, Sir Henry, it is in List III because the administration would be Provincial, but, as I say, I am looking into this point of the Medical Council again.

Mr. N. M. Joshi.

13,167. The words "central agency" refer to any kind of central organization, even in the Transferred and Provincial field?—Yes, to any kind of central agency, but, quite obviously, a central agency outside the Federal field would have to come into being with the agreement of the Provinces.

Sir Austen Chamberlain.

13,168. As you are referring to Item 42, may I ask whether the word "central" is intended to apply to the institutes for research as well as to agencies? I presume it is not intended to prevent a Province from establishing a local institute of research?—No; "central" is obviously meant to cover both.

Lord Rankeillour.

13,169. My Lord Chairman, may I ask a question on this point to clear up something that we discussed the other day? Secretary of State, you will remember that under No. 125 you told me that the use of the words "Federal subject" covered "Reserved subjects" throughout the Proposal?—Yes.

13,170. Under Proposal 125, in both paragraphs, it will be the Federal Government which will give the directions to a Provincial Government with regard to the three Reserved Services, will it not? It says so?—The answer is Yes and No. If Lord Rankeillour means the Federal Government giving directions just as they would in departments that were not reserved, the answer is No. If, however, he means by the Federal Government the Governor-General acting at his discretion that is the constitutional position of the Governor-General in a matter of this kind. The Federal Government in this case, in the case of a Reserved Department, is the Governor-General acting at his discretion. Then the answer is Yes.

13,171. In the very next section you have "The Governor-General will be empowered in his discretion," and I submit the natural construction of that would be that in the previous paragraph "the Federal Government" meant the Governor-General on the advice of his Ministers?—I do not think it is the natural construction, but if it is we will change it. The position is, as I have stated it just now; and that is our intention, and we will see that our intention is carried out in any future draft.

13,172. That it shall be the Governor-General at his discretion?—That is what it comes to.

Mr. M. R. Jayaker.

13,173. May I refer in this connection to paragraph 55 of the Introduction, the last four lines: "The latter provision will cover all classes of Federal subjects, including those administered by the Reserved Departments." This is the material sentence; "In the latter class of subjects, the directions will, of course, be issued by the Governor-General"?—Exactly. That is just my

point, and that is really the answer, under the White Paper, to Lord Rankeillour's question.

Lord Rankeillour.

13,174. But you do need to change the wording here to make it clear?—We will look into that. If it is needed to change it we will change it.

Lord Rankeillour.] Thank you.

Sir Austen Chamberlain.

13,175. May I ask a question before we leave the subject? Secretary of State, is there anything in India that corresponds to the practice we have here of leaving orders to be made by His Majesty in Council for the execution of the provisions of certain laws that are passed by Parliament? Is there anything equivalent to that in an order by the Governor-General or by the Governor-General in Council?—Something in the nature of Indian Orders in Council?

13,176. Pursuant to Statute?—At present, Sir Austen will remember that there are statutory rules made under the various Government of India Acts. His question is directed to the future—whether powers of that kind are in these proposals?

13,177. Yes, I put that. Would cases arise where the Governor-General made rules in pursuance of a Statute?—Yes, but only so far as the Statute said so.

13,178. Yes but the Statute might for convenience of execution provide that statutory rules should be made by authority of the Governor-General?—Yes.

13,179. If he made such a statutory rule that rule would be a lawful order, would it?—Yes.

13,180. Then will the Secretary of State look at paragraph (g) of Proposal 70 and consider its bearing upon such orders when issued by the Viceroy pursuant to Statute in the concurrent field? Proposal 70 says: "In the administration of the government of a Province the Governor will be declared to have special responsibility in respect of (g) securing the execution of orders lawfully issued by the Governor-General"?—Yes.

13,181. I merely want to call at this moment the attention of the Secretary

of State to the fact that apparently in pursuance of a Statute in the concurrent field, the Governor-General might give such orders and that then under Proposal 70 it would be the duty of the Governor to see that they were obeyed?—I will look into Sir Austen's point. Offhand, I would say that sub-section (g) of No. 70 refers to orders given at the Governor-General's discretion, but I will look into the point.

Marquess of Salisbury.

13,182. I am sure the Secretary of State will not think I want to catch him out in any inconsistency, in this very complicated subject, but he told me only a day or two ago that Proposal 70 only referred to orders given by the Governor-General acting on his special responsibilities?—That is so. I do not think anything I have said this morning changes that view.

Sir Austen Chamberlain.

13,183. I think that is exactly what you have just replied to me?—But I will look into Sir Austen's point. I think I see what is in his mind.

13,184. What I thought was that subparagraph (g) of paragraph 70 might perhaps provide a solution of the point on which he and I differed yesterday, and I merely wanted to direct his attention to it from that point of view?—Thank you; I am much obliged for the suggestion.

Mr. Morgan Jones.

13,185. I understood the Secretary of State to tell me on Tuesday that he could not offer subparagraph (g) in the sense Sir Austen has now indicated because it fell within the paragraph dealing with special responsibilities?—That is the answer I have just given this morning again, but I will look into this very technical point again.

Sir Austen Chamberlain.

13,186. What I am inviting the Secretary of State to do is to consider, apart from the technical point, or apart from the meaning of it as it stands in paragraph 70, whether that is or is not an applicable machinery to the case we were

discussing the day before yesterday ?—  
Yes, certainly.

*Dr. Shafa'at Ahmad Khan.*

13,187. Secretary of State, in the list of exclusively Federal subjects in the White Paper, is it meant that power is given to the Federal Government over policy legislation and administration ?—Which items have you got in mind—the whole list ?

13,188. The whole list. What exactly is the competence of the Federal Government ? Would it extend to policy and legislation as well as administration in every subject from Nos. 1 to 48 ?—Generally speaking, the answer is, Yes, subject, of course, to what we have generally accepted as likely to happen in the case of the States ; that is to say, the application of a particular piece of administration to the conditions of the States set out in the Instrument of Accession. Otherwise, the answer is generally, Yes.

13,189. So, generally, the Federal Government would be empowered to send its own officers for administering Federal subjects in Indian States unless and until there is an agreement to the contrary ?—That is so.

13,190. That is slightly different from the compromise arrangement which was arrived at by the Federal Structure Committee of 1930, where the function of the Federal Government was differentiated with reference to policy on some subjects, and with reference to administration on other subjects ?—I think what would happen, in practice, would be that these would be the Federal subjects, and then the Instruments of Accession are agreed to between the States and the Crown, and the particular way in which those Federal subjects are applied to the State then becomes a part of the Treaty, but, speaking, generally, these are the Federal subjects for policy and administration.

13,191. And legislation ?—And legislation.

*Mr. M. R. Jayaker.*

13,192. May I put a question on that point ? Is it intended that in respect of subjects Nos. 1 to 48 it is permissible for any State when it enters into a

Treaty to say that on any of these subjects it will only federate respect of legislation alone, and not in respect of policy and administration ?—It might theoretically be possible for a State to make such a claim, but, in actual practice, the Crown would refuse an accession unless the accession was really upon a substantial basis.

*Dr. Shafa'at Ahmad Khan.*

13,193. What I feel is that the arrangement arrived at in 1930 was clear. It differentiated with reference to each particular subject the function of the Federal Government, and they were in a position to know whether a particular Federal law applied to all the States with regard to policy only, or with regard to legislation ?—I think we found when we considered this question in greater detail last year (Dr. Shafa'at will remember we had a Committee on the subject) that the expression "for legislation or for administration" did not really carry us very far, and that is the reason it has dropped out, but if Dr. Shafa'at would like to go into this question in greater detail perhaps we might go into greater detail of it in the Committee which was suggested this morning.

13,194. I do not want to cover ground which has been covered previously regarding the question of concurrent legislation, but am I right in assuming that, according to the present Government of India Act, 1919, the Legislative Assembly can pass any law, and can thus override all the Provincial Legislatures in every subject ?—That is so. Dr. Shafa'at will remember that the previous assent of the Governor-General is required.

13,195. Yes. In 1930, 1931 and 1932 we discussed and arrived at certain conclusions regarding the distribution of subjects between Provinces and the Federal Government ?—Yes.

13,196. And that had the consent and agreement of some very important parties, and very important and influential organisations represented, through the Delegates in India ?—Yes.

13,197. Consequently, this is a factor which must be taken into account in considering the proposals which are embodied in the White Paper ?—Yes, certainly.

13,198. I do not say that it is the only factor. Of course, I do not regard these agreements as settled, nor do I think that they cannot be altered, but I do think that the compromise embodied in Proposal 125 (the two paragraphs) did represent a measure of agreement between people who were very keen on the maximum amount of provincial autonomy for the Provinces. Then there was the question of sanction. Am I right in saying that in many cases it is much better to get what is called moral sanction by consultation with the Provinces rather than trust any particular law?—That has always been my view. It is much the better course. I think every Federation everywhere in the world has found the great difficulty of applying sanctions when sanctions have been thought to be necessary. It is both a political question and a practical question. Politically it is much better to have agreement. Practically it is very difficult to find a suitable sanction.

13,199. And this is the experience also of Australia, that the Prime Minister's Conference has been able to achieve much more than any law that has been passed concerning the relation between the Provinces and the Centre. I would like to deal with another point which has not been touched so far. I do not know what the procedure regarding the surrender of Sovereignty is going to be, but, I take it, it will take the following form: The States will surrender sovereignty concerning their Federal subjects, and place it at the disposal of the Crown, and the Crown, I take it, will then place it at the disposal of the Federation. Will it be possible for the States later on to resume their sovereignty?—No; a bargain is then entered into—something in the nature of a treaty is entered into. Obviously that treaty could not be unilateral, neither on the side of the Crown, nor on the side of the Estates. It is a bilateral agreement.

13,200. When the Crown has placed the powers acquired from the Indian States at the disposal of the Federation for the functioning of the Federation then, of course, the Crown cannot return it to the Indian States. It is a part of the Federation?—It is a part of the Federation.

13,201. And they cannot demand to resume it later on?—No.

13,202. Connected with this question is the question of certain rights which had been given by the Indian States as a result of negotiations with the Government of India; for instance, jurisdiction over the Indian railways. They gave up those rights through a series of Treaties I take it when the Federation is brought into being there will be no claim on the part of any unit for the retrocession of that jurisdiction?—One cannot make a general answer to a question of that kind. It must depend upon the Instrument of Accession. Our desire is that the accession should be as full and as wide as possible within the Federal field. Exactly what will happen in individual treaties one cannot predict. What one can say quite definitely is that the Crown would refuse the accession of a State if it felt that the State was really not undertaking a sufficiency of Federal obligations.

Sir Akbar Hydari.

13,203. May I ask a question? With reference to Dr. Shafa'at Ahmad Khan's question, the jurisdiction over certain railways has been made over to the Crown. The question is with regard to the transfer of that jurisdiction to the Federal Government, and, therefore, by the jurisdiction having been merely ceded by the State to the Crown it does not necessarily lead to a demand on the part of the Federal Government for that transfer to be effected *ipso facto*, by the Crown to the Federal Government without the consent of the State. Is not that so?—I think it is so, but it is a technical legal question. As far as I understood it, I think it is so.

13,204. I thought Dr. Shafa'at meant that the Crown cannot retrocede jurisdiction to an Indian State simply because a State has transferred jurisdiction to the Crown, and therefore that when the Crown has transferred railways under its jurisdiction to the Federation those also should *ipso facto* go?—I would like just to look into that question. Sir Akbar is almost always right in his Constitutional comments, but I would like to look into it before I said Yes or No.

13,205. We are very particular about this, Secretary of State. We have transferred a thing to you, to the Crown, but it does not necessarily follow that we have *ipso facto* transferred that to any other agency that the Crown may choose?—Yes.

Sir *Manubhai Mehta*.] That will be governed by the Treaties of Accession.

Mr. *M. R. Jayaker*.

13,206. May I direct attention to the provisions of paragraph 132 : “existing powers of the Secretary of State in Council in relation to property allocated under the preceding paragraph and in relation to the acquisition of property and the making of contracts for purposes of government which are not outside the Federal and Provincial spheres will be transferred to and become powers of the Governor-General of the Federation and Governors of the Provinces respectively.” Therefore all existing rights that the Secretary of State or the Crown possess will under the provision of paragraph 132 be transferred to the Federal Government?—I think paragraph 132 does raise another series of issues. I think the questions that were addressed to me just now were mainly questions connected with paramountcy.

Dr. *Safa'at Ahmad Khan*.

13,207. This is a very important point. Last year a Committee of Representatives of the Indian States made a claim for the retrocession of jurisdiction over the Indian railways, and if that claim is admitted I do not know how the Federation itself is going to deal with it?—Dr. *Shafa'at* can rest assured that there is no intention whatever of forming a Government that you call an All-India Federation in which British India and the States nominally enter but in which one party, whichever it may be, does not undertake a sufficiency of Federal obligations.

Mr. *Morgan Jones*.

13,208. Might I bring Sir Samuel Hoare's mind back again to the answers that were given to Mr. Joshi? Sir Samuel has agreed, I think, that the question as to the right of a Province to veto the application of legislation carried by the Central Legislature within its own

territory is one of the very greatest possible importance, because it is true, is it not, that one Province may object to one type of legislation and another Province may object to an entirely different piece of legislation?—There is no question of a veto, and Mr. Morgan Jones no doubt will remember that my answers were dealing only with the concurrent field.

13,209. Yes, I know. There are 23 subjects in the concurrent field, are there not?—Yes.

13,210. It is possible that one Province may object, say, to the application of legislation carried by the Central Legislature in respect, shall we say, of No. 6; another may object to No. 7; another may object to the whole lot from 13 to 18, dealing with labour legislation, and consequently it becomes of prime importance that some sort of authority may be provided to the Central Legislature whereby that may be overcome where a Province objects?—I do not want to put myself into the position of appearing to argue against uniformity of administration in this scheme. The difficulty is to find a sanction without striking at the roots of Provincial autonomy. The difficult cases and these are probably the cases that are in Mr. Morgan Jones' mind, are cases connected with labour legislation.

13,211. Yes. May I put a question apropos of that particular point now? The Secretary of State will remember that on page 93 we have set out for us the composition of the Provincial Assembly, Madras, for instance. In Madras, there is provided a place for six special seats out of 215?—Yes.

13,212. In Bombay, seven out of 175; in Bengal, eight out of 250; and in the United Provinces, three out of 228. Therefore, it is quite clear, is it not, that the voice of labour in an area in Provinces such as those will be comparatively weak in point of numbers, anyhow?—Mr. Morgan Jones will remember that those are only the special seats. With a fairly wide franchise labour has a great deal of influence in the other seats.

13,213. I accept that point though I may not perhaps attach undue importance to the weight of it?—Under our present proposals I think agricultural

labour is something like three-fourths of the voting power.

13,214. That is quite true, Sir Samuel; I will not press an argument on that point at all; but the point really is this: In an area such as this where labour in respect of special representation is represented in a diminutive kind of way, is it not clear that there will be less chance for labour to express its mind if the Provincial Government tends to take an antagonistic attitude in respect of labour legislation?—Yes. It is open to question though which Government is likely to be the more sympathetic towards labour, the Federal Government or the Provincial Government. I think it is difficult to dogmatise that one Government will be more favourable than the other, but I admit this difficulty with labour legislation.

13,215. May I put another proposition to Sir Samuel? Suppose an International Labour Convention were arrived at at Geneva, and the Indian Representation at that Convention agreed to ratify it so far as the Central Province was concerned, what would be the position of the Central Body which had formally accepted the proposition of ratification if a Provincial Government has the right to contract out of it?—The Provincial Government has not the right to contract out of it. An International Obligation is included in the Federal field. The Provincial Government would have no right to contract out of it. The trouble arises, though, and it is a trouble that has arisen with the Dominion of Canada, what sanction can you apply to a part of the Federation that refuses to put the Treaty into force?

13,216. But, Sir Samuel, am I not right that even though the Central Government may have agreed to ratify the Convention, the Convention, in fact and in practice, would not be carried out without the carrying of a Bill by the Central Legislature?—Yes; and I assume that the Central Legislature would carry a Bill of that kind.

13,217. Certainly. I think so too; but, when the Bill has become an Act, by the action of the Central Legislature, as I understand it, you have already admitted that the Provincial Government would still have the right not to carry that into operation within its own

territory?—No, not at all. If I gave that impression I expressed myself very badly. The Provincial Government would have no such right.

13,218. I put that too strongly, I admit. The effect, rather, would be this, that while the Central Legislature would have the right to carry an Act of Parliament to ratify the Convention, it would be possible for the Provincial Government to refuse to carry it out and in the view of Sir Samuel there is no machinery to compel them to do so?—It is so; there is no machinery under our present Proposals. Directions, of course, would be issued to the Provincial Government and the Provincial Government would be breaking one of the obligations of the Federation; but, when it comes to taking action, I fail to see what action can be taken.

*Sir Austen Chamberlain.*

13,219. You say in such a case it would be a matter of foreign relations?—It would be a matter of foreign relations.

13,220. Are they not a reserved subject of the Governor-General?—Yes, they are.

13,221. Then would not 70 (g) to which I called attention apply in that particular case, or would it not?—I think that is so, and I think the clearer cases could certainly be dealt with under the special responsibility of the Governor-General. The trouble arises in a case that is not very clear-cut, and it is a question whether the Treaty is actually being carried out or not in a particular part of the ratifying territory.

*Mr. N. M. Joshi.*

13,222. May I draw attention to the wording of Item 8 on page 114. "External affairs, including international obligations subject to previous concurrence of the units as regards non-Federal subjects." The Federal Government possesses power over external affairs on Federal subjects. Now the question is whether the concurrent subjects are to be considered non-Federal or Federal?—I think I must look into this point again. I think here it would be carrying our proposals too far to say that a single Province might veto the ratification of an agreement that the rest of India wanted. I will look into the point again.

13,223. The wording should be as regards purely provincial subjects?—I would like to look into it again.

*Sir Austen Chamberlain.*

13,224. I should be very glad if you would Secretary of State, because I think in answer to me two days ago, you told me that the ratification by the Central Government in matters which were in the concurrent field would have to be subject to the consent of the units. I so understood the answer to that effect?—I think I was then dealing not so much with ratification as legislation; but, anyhow, whether I was or whether I was not, I will look into the point again in view of this discussion.

*Mr. Morgan Jones.*

13,225. Might I follow the point a little further, Sir Samuel? It is to be assumed, is it not, that when the Governor-General attaches his signature to a Bill carried by the Central Legislatures, he thereby attaches authority, as it were on behalf of His Majesty the King to the Bill as such. It becomes an Act of Parliament?—Yes.

13,226. It is also to be assumed, I take it, that the act of the Governor-General in attaching his signature, makes that Act also an authority for the Governor of a Province?—Yes, and to the Province and also to the Courts of Law.

13,227. Now may I ask: Supposing that the Governor of a Province were called upon by the Governor-General to see to the application of an Act of Parliament within the territory of that Province, what machinery would that Governor have at his disposal to carry it through?—I am not quite sure whether Mr. Morgan Jones means a general authority. In the field of the Governor's special responsibilities, his course is clear. His order is valid; it has to be accepted by whatever is the appropriate machinery in the Province.

13,228. That is not my difficulty, Sir Samuel—it is the practical application of it. I can quite see that the authority of the Governor-General would go automatically to the Governor, and the Governor says: "I want to apply this Act of Parliament in this area; follow my instructions". But the Governor of

the area (if I may use the expression) is on strike. Now what machinery has the Governor to apply this Act in the various districts of his Province?—In the field of the special responsibilities, that is the only valid order in the Province. Every official, therefore, has to obey his order, and it goes through the whole machinery of the command in the Province, and that is the only valid order. Outside the field of his special responsibilities, he has no such power.

13,229. So that if the Central Legislature carried a Bill dealing, shall we say, with a piece of labour legislation, and the Governor of the Province were called upon by the Governor-General to apply the Act, he is perfectly helpless?—That is the position now. Mr. Morgan Jones suggested that in a case of this kind, the Governor-General or the Governor should go outside the field of his special responsibilities. That will carry us a very long way; I think further that probably many of us would wish to go. It would strike really at the whole root of responsible Government.

13,230. Per contra, if a Province is entitled to contract out of an Act of Parliament, it is striking at the root of Federal authority?—I think that is so. The trouble comes when it is a question of voting money. But I should be glad if Members of the Committee and the Delegates would think over this very difficult question of labour legislation, it is a very difficult question; keeping in mind the two dangers to avoid, namely, the danger of the uniformity of legislation being broken up and the danger on the other hand of undermining the whole basis of responsible government, both at the Federal Centre and in the Provinces.

*Sir Austen Chamberlain.*

13,231. Labour is one of the concurrent subjects, is it not, Secretary of State?—Yes.

13,232. And, as I understand it, Mr. Morgan Jones is putting to you this case, that a law dealing with the conditions of labour is passed by the Federal Legislature and assented to by the Governor-General; that the Governor-General then finds it desirable or necessary to issue instructions to the Governor of a Province to execute that law. Your

answers have proceeded upon the basis that the Governor-General had so issued instructions to the Governor : is not that so ? That was the hypothesis put to you ?—I was dealing generally with the question whether outside the field of special responsibilities, either the Governor-General, or the Governor, would be able to act at all.

13,233. That is a different thing. Do not let us speak for the moment of the field of special responsibilities. I understood Mr. Morgan Jones to have taken as an illustration labour legislation, which is a matter of concurrent legislation in the Concurrent List ?—Yes.

13,234. And the basis of his further questions to you was, what is the Governor to do if he has instructions from the Governor-General to execute this Federal Law passed in the concurrent field and his provincial Government refuse to do it. I want to ask you whether, in view of the answers which you gave to me yesterday and of the meaning which you attach to paragraph 125, the Governor-General could issue any such instructions ?—I think that is generally the case—the case as I stated it yesterday. I was thinking of the case of the border line case of international obligations ; but apart from that, my answer is as I gave it to Sir Austen yesterday.

13,235. Then, unless the Governor-General acts in pursuance of his special responsibility in regard to foreign relations, he could give no such instructions to the Governor of a Province ?—That is so.

*Mr. Morgan Jones.*

13,236. But even supposing the Governor-General could not in fact formally issue instructions, my question of difficulty still remains. What can the Governor do in a Province to implement the Bill of the Central Legislature ?—My answer is this, Mr. Morgan Jones : The Governor has no power except in the field of his special responsibilities.

*Chairman.*

13,237. Secretary of State, I am sure the Committee would desire to meet your convenience. Would you like us to go now for 20 minutes to paragraphs 130 to

135, or would you sooner adjourn ? You have had a very heavy morning ?—I would suggest, my Lord Chairman, that it might be a good thing to begin upon those paragraphs for this reason : they look very technical and very formidable, but it may be that, after a short discussion, we shall find that there is not a great deal that arises upon them. I could anyhow make an introductory observation or two about them, and you could then judge whether it was a good thing to begin the examination or not.

*Marquess of Salisbury.*

13,238. May I say in order to shorten matters, that I have looked through these matters very carefully, and as far as I am concerned, there are no questions to ask. The careful scrutiny of my colleagues may have found something, but my impression is that they are nearly all consequential on the rest of the document ?—Lord Salisbury is quite right. They are purely consequential and they are really applying to the new conditions the conditions that were, generally speaking, included in the Government of India Act, and I think, if I might just give a short explanation, the Committee will see that that is so. The necessity for provisions on the lines of these proposals arises from the fact that under the existing Government of India Act the Secretary of State in Council can alone sue and be sued in respect of any rights or obligations arising in connection with the Government of India. Thus all the numerous suits to which Government is a party in India are necessarily brought in form by or against the Secretary of State in Council as the case may be. With the institution of provincial autonomy and the legal delimitation of the power and authority of the Provincial Governments of the future and of the Federal Government accompanied by the disappearance of the Secretary of State in Council as a corporation with sole final authority over all Indian expenditure, it becomes necessary that the rights and obligations of Government in India should be apportioned between the Federal and Provincial Governments respectively, which will consequently have to be created juristic persons for the purpose of suing and being sued. At the same time, it



will obviously be necessary that these changes should not affect the existing rights as against the Secretary of State in Council to a greater extent than is involved in the necessary consequence that they now become rights as against the Secretary of State. These paragraphs are, in short, a translation into terms appropriate to the White Paper scheme of the provisions of Sections 28, 29, 30, 31 and 32 of the existing Government of India Act.

Marquess of *Salisbury*.] I have nothing more to say, as far as I am concerned.

Sir *Austen Chamberlain*.] I have no questions.

Sir *Reginald Craddock*.

13,239. There is just one question I wanted to put, if I might, and that is as regards claims by pensioners of the Services. Hitherto, I understand (it is only a theoretical thing, though it might possibly arise) that the pensioner has a power of suing the Secretary of State here in London for the alleged non-payment of his pension. Under the arrangements to be made, will such a pensioner, if he had to resort to law, be under the necessity of suing in the courts in India, or does the Secretary of State assume responsibility?—The right would remain intact and it might be necessary to define it to make it quite clear that the right would remain to sue here if he wished, or in India. It is the intention to leave the right intact.

Sir *Hubert Carr*.

13,240. There is one point I would like to ask the Secretary of State about. It is in regard to commercial leases. As I understand it, future commercial leases will be with the Governor-General or the Governor, but that existing commercial leases will be transferred from the Secretary of State in Council to the Secretary of State, not to the Governor-General and Governors?—Yes, that is so.

Sir *Hubert Carr*.] Thank you; that makes it clear to me.

Mr. *M. R. Jayaker*.

13,241. May I ask one or two questions on paragraph 131. I suppose that

refers to all property in India wherever situated. It would include property within the territory of the Indian States also?—Yes, it includes any property, except the property that is held under paramountcy.

13,242. And it includes under Proposal 132, outside paramountcy again, all existing property rights, acquisitions, etc., within the territory of the States, outside paramountcy. I know the special case of paramountcy; I am not touching that at the present moment?—Yes, if it is property of the Crown.

13,243. I am only asking, because an argument has been made that the States may have ceded certain rights and certain property to the Crown, but that does not necessarily pass to the Federal Government as the successor of the Crown. That is why I am asking this question?—Mr. Jayaker is referring here definitely to property?

13,244. Yes?—Not to jurisdiction, which is another thing?

13,245. I am not speaking of rights, which come under paramountcy?—No, but I made the distinction to be quite clear what was the question. If Mr. Jayaker is dealing with property, my answer is Yes.

Mr. *M. R. Jayaker*.] Property includes, unfortunately, in law, all rights.

Sir *Hari Singh Gour*.] No, not all rights.

Mr. *M. R. Jayaker*.

13,246. Which are vested in a party?—That raises surely another issue. This clause here does deal only with property.

Mr. *M. R. Jayaker*.] Then the existing powers of the Secretary of State will include, will they not, all intangible rights which amount to powers, outside paramountcy?

Sir *Manubhai N. Mehta*.

13,247. In relation to property?—You see here "powers in relation to property."

Mr. *M. R. Jayaker*.] I am asking about such powers. I am keeping outside paramountcy altogether. I am keeping to the Federal field.

*Sir Austen Chamberlain.*

13,248. Does not this question really touch the same matters as were put to your earlier, in connection with the other clauses, in which you said you would like to look further into it?—I think this is quite clear. It is property within the meanings of these sections here, Section 130 up to 135, but I do not want to have any misunderstanding. It does not go farther than that.

13,249. I thought Mr. Jayaker said he was putting his question in relation to questions which had been put earlier in the day?—Yes.

13,250. I thought what he wanted to get an answer from you about was the railways which had been transferred?—Yes.

13,251. The answer which you have just given I understand is not intended to refer to the transferred administration of the railways?—No, it simply covers property which is within these clauses here.

*Mr. M. R. Jayaker.*

13,252. Supposing the railway was transferred with the result that the land covered by the railway line has become the property of the Crown, will it not pass under No. 131?—The jurisdiction, surely, brings in paramountcy.

13,253. I am not speaking of the jurisdiction; I am speaking of the actual ownership of the land?—Yes—the ownership of the land. Is there any question about the ownership of the land because the ownership of the land is the State's ownership.

*Dr. B. R. Ambedkar.*] It was given to the Federation.

*Mr. M. R. Jayaker.*

13,254. It is the property of the Crown at the present moment?—You mean land that is ceded?

*Mr. M. R. Jayaker.*] Yes.

*Sir Akbar Hydari.*] I may say that, as a matter of fact, up to very recent years, the land on which the railways are built has never been paid for.

*Mr. M. R. Jayaker.*] Then the question does not arise and it does not fall under Proposal 131.

*Sir Akbar Hydari.*] Therefore that is not the property of the Crown. It would be the land of the State.

*Mr. M. R. Jayaker.*] I am speaking of those cases where at present the land is the property of the Crown; does not that pass to the Federal Government?

*Mr. Zafrulla Khan.*] With reference to *Sir Akbar Hydari's* remark, the land may not have been paid for, but in many cases of which I know land has been handed over without payment to the Crown and belongs to the Crown, so his remark that it has not been paid for does not conclude the matter.

*Sir Manubhai N. Mehta.*

13,255. I do not think it belongs to the Crown. The Crown at one time used to make agricultural profit out of it. Now the Government of India say they have no intention of doing so?—Apart from these wide issues, the answer is a simple one. Where the property is the property of the Crown it is transferred. Where it is not, it is not transferred.

*Mr. M. R. Jayaker.*

13,256. That is all I want. That is irrespective of whether the property is in the territory of the Indian States, or is in British India?—Yes.

*Sir Hari Singh Gour.*

13,257. And by "property" you mean not only tangible rights and property, but also intangible rights and property?—I should like to see that question a little bit more concrete, not being a lawyer. What is in *Sir Hari Singh Gour's* mind?

13,258. The property may be tangible rights in property like immovable property, land, and so on, and rights in property would be property in the legal concept, though it is not visible and tangible?—I do not like to give a legal opinion upon a question of that kind.

13,259. May I put it differently?—Yes.

13,260. The word "property" is here used in the larger sense as including all that is, in the legal concept, property?—Yes.

13,261. That is right?—In the concept of property as used in the Government of India Act.

13,262. And defined in the General Clauses Act?—(Sir *Malcolm Hailey*.) It is a translation of the sections to the circumstances of the appropriate sections, 28 and 32, etc., and you will find it will have no larger implication than those sections of the Government of India Act. (Sir *Samuel Hoare*.) And here let me say again, to make it quite clear, that this is property outside the field of paramountcy.

Mr. Y. *Thombare*.

13,263. As regards the allocation, for instance, of the railway property between the Federal and Provincial Governments, as Sir Akbar Hydari has just said, there has been land which has not been paid for, so that the contribution to the railway property so far has come, we may say (it may be very little) from the States, and the present Government, so in that case will there be an allocation of that property between the Federal and Provincial Governments and the Governments of the States concerned?—I would make the same answer to Mr. *Thombare* that I made to Mr. *Jayaker*. If there is Crown property (it is a question of fact) outside the field of paramountcy, then it does come within the provisions of this clause. It is a question of fact.

13,264. But, if it is a question of property within the jurisdiction of paramountcy—?—Then it does not come within this clause at all.

13,265. Would it be considered. Would it be gone into; that is all?—I think it must be gone into.

• Sir Akbar *Hydari*.

13,266. I want to ask with reference to paragraph 134; you have got "including existing immunities from Indian Income Tax in respect of interest on sterling loans issued or guaranteed by the Secretary of State." Is there any reason why sterling loans have been specified to the exclusion of rupee loans?—It is dealing with existing contracts and existing immunities.

13,267. But there are immunities with regard also to rupee loans?—I will look into the point raised by Sir Akbar.

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Mr. M. R. *Jayaker*.

13,268. There are War loans which are free from income tax?—I had better look into Sir Akbar's point. I will give him an answer when I have consulted my financial advisers. The desire under paragraph 134 is that all existing contracts should remain intact, and if paragraph 134 does not carry out that intention we will alter the drafting.

Sir Akbar *Hydari*.

13,269. You are aware of the exemption from income tax of Indian Princes with regard to a lot of loans which have been issued with regard to which there is a special form for Indian Princes, and we do not want that that exemption should at a subsequent period be called into question?—We will look into it, but our intention is that all existing contracts should be safeguarded.

13,270. A question of drafting: "on all the revenues of India, whether Federal or provincial"—we should have liked it to have been said "on all the Federal or Provincial revenues." We are not quite sure whether "Federal" includes us or not.

Major *Cadogan*.

13,271. On paragraph 131, I would like to ask the Secretary of State how far, if at all, one class of property vested in His Majesty for the Government of India is affected by the allocation, namely what, for want of a better phrase, I may call Military property, barracks, and so on. That apparently is not outside the Federal and Provincial sphere, or are such properties outside the Federal and Provincial sphere?—Do you mean both in British India and in the Indian States?

13,272. Yes?—It would fall, I suppose, in British India into the Federal sphere, and, being in the Federal sphere, it would be transferred always remembering that Defence is a Reserved subject. In the case of the Indian States I suppose there it would be a question of fact whether the land had been taken up under paramountcy, or whether it had not. In a case where it had not, it would be transferred; in the case where it had, it would not.

•

Sir Akbar Hydari.

Major Cadogan.

13,273. In the case of Defence it would remain reserved?—In the case of Defence it would remain reserved, but, technically, it would be within the Federal field.

13,274. You say property outside the Federal field would not be affected by this allocation. Therefore, I take it for granted that that which is inside will be affected?—Yes.

(The Witnesses are directed to withdraw.)

Ordered : That this Committee be adjourned to Tuesday next at 10.30 a. m.

17th October 1933.

PRESENT :

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Linlithgow.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl of Lytton.  
 Earl Peel.  
 Lord Middleton.  
 Lord Ker (Marquess of Lothian).  
 Lord Hardinge of Penshurst.  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.

Lord Hutchison of Montrose.  
 Major Attlee.  
 Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Lord Eustace Percy.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.  
 Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
 Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

Chairman.] The Secretary of State will give evidence this morning on paragraphs 106 to 109 of the White Paper, which paragraphs deal with Excluded Areas.

Mr. F. S. Cocks.] My Lord Chairman, on a point of order may I make a suggestion? This question was discussed yesterday at Sub-Committee D. We have not had an opportunity of seeing

the record of that Committee and of the evidence then given. Would it be of assistance to the Committee if the Secretary of State's examination this morning were postponed a little until we could see the evidence given before the Sub-Committee ?

*Chairman.*] I am in the hands of the Committee in that matter.

*Witness (Sir Samuel Hoare).*] My Lord Chairman, I hope very much that you will not postpone this investigation this morning. I think the Committee should realise that it does place a very heavy burden upon me to get up a particular body of evidence. I must assume that the arrangements will so far as possible be followed. I would have thought, subject to what the Members of the Sub-Committee think, that it would have greatly helped them to have had this examination so shortly after hearing the evidence upon the subject.

*Chairman.*

13,275. Secretary of State, I take it also that you would be willing to deal in discussion with any points which emerge, partly as a result of the examination to-day and partly as a result of the examination of the witnesses by the Sub-Committee yesterday ?—Certainly.

*Marquess of Salisbury.*

13,276. Perhaps the Secretary of State would allow me to ask him this. First of all, would he let the Committee know what the White Paper means by a "Partially Excluded Area." Of course, it is evident to some extent, but perhaps he might add to that ?—Yes, my Lord Chairman. At present there is more than one type of excluded area under the Government of India arrangements, the types depending, roughly speaking, upon the standard of civilisation in the particular area. Lord Salisbury will find a detailed description of the backward areas on page 156 of Volume I of the Statutory Commission Report. He will there find set out in some detail the distinctions between one kind of area and another. We now propose to have two classes of area for these backward districts, namely, an area that would be entirely excluded

from the Provincial administration and an area that would not be entirely excluded, but would be subject to the Governor's decision, as to how far the Provincial administration should run in that area.

13,277. The Committee has, of course, read in Proposal 70 (f) on page 55 of the White Paper—that is the special responsibility proposal—that : "the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas." That would only be, as it were, a recital of what is subsequently going to be done in what we are going to discuss this morning, I suppose. There is nothing beyond what is repeated in the paragraphs now under examination in 70 (f) : it is a cross-reference, as it were ?—No, it is more than that. Paragraphs 106 to 109 go further than Paragraph 70 (f). 70 (f) deals with the partially excluded areas giving the Governor special responsibility in the partially excluded areas. These paragraphs deal also with the totally excluded areas in which the whole administration is the Governor's administration.

13,278. I am much obliged. I meant, of course, that paragraph 70 was really a cross-reference to the partially excluded areas recited in the paragraphs that we are now discussing ?—Yes, and there is the further point that Lord Salisbury should keep in mind, namely, that paragraphs 106 to 109 deal also with the special safeguards over legislation in the partially excluded areas.

13,279. Yes. Then, still keeping in mind the relation between paragraph 70 (f) and these paragraphs, would the Secretary of State say how far these paragraphs react upon the North West Frontier Province ? He will remember that there are special provisions in Paragraph 70 as to the North-West Frontier Province. Would part of the North-West Frontier Province be a partially excluded area or all of it ?—No, it would not. The North-West Frontier area, as Lord Salisbury knows, is divided into two parts. There is the administered part and there are the tribal areas. The tribal areas are outside Indian administration altogether.

13,280. Completely excluded?—Completely excluded. The Province itself is administered just like any other Province, with one or two specific changes due to military reasons.

13,281. Therefore, the North-West Frontier Province would not come into question as a partially excluded area at all?—No.

13,282. Then in regard to these excluded areas and partially excluded areas there must necessarily be a special staff associated with the Governor in whatever case it may be. He must have a special staff to administer them, I suppose?—In the excluded areas, certainly. In the partially excluded areas, so far as the Provincial administration does not cover the whole field.

13,283. It is a question of degree in the partially excluded areas?—It is a question of degree.

13,284. The Secretary of State will know that several of us have been in these discussions very uneasy as to where the staff is to be drawn from for these purposes. We anticipate, of course, that under the new state of things, if it comes into being, there will be a great diminution in the European employees of the Government of India and the Provinces, and we wonder where all the staff is to be raised from which is to take charge, let us say, of the excluded areas, or, to some extent, of the partially excluded areas?—The staff will be just what it is now. These Services will not be special services for the excluded areas. The personnel will be drawn from this or that of the existing services.

13,285. But the staff will have to be fairly extensive, will it not?—No, I do not think so. I do not see why it should be any more extensive than it is now.

13,286. But there will not be the same scope as there is now?—For instance, if I might give a concrete case, take the case of the totally excluded area, namely, the Assam area: that is the really only totally excluded area that we propose. I would imagine that so far as numbers go, even there the personnel of the staff is a comparatively small one. I do not know whether Sir Malcolm could give me some details about it. (Sir Malcolm Hailey.) I think it is actually four or five officers. (Sir Samuel Hoare.) Sir Malcolm says it

would be four or five senior officers in all the Assam Districts. (Sir Malcolm Hailey.) Superior officers. (Sir Samuel Hoare.) Who would, of course, presumably be Secretary of State servants and recruited just as they are now.

13,287. Will Assam be a partially excluded area?—No; the Assam tracts are totally excluded.

13,288. And in the same way, the tribal area on the North-West Frontier is totally excluded?—The tribal area is outside Indian administration altogether, and therefore it does not come into these proposals at all.

13,289. That is controlled by the Viceroy himself?—Yes, it is controlled by the Governor acting as agent for the Viceroy, as far as you can accurately use the term "control."

Marquess of Reading.

13,290. May I ask a question? I am not quite sure that I caught the answer that the Secretary of State gave. Did you say, Secretary of State, that the only totally excluded area that would come under this discussion would be that of Assam?—That is our proposal.

Marquess of Zetland.

13,291. Secretary of State, I am not quite clear with whom would the officers who are in charge of the excluded areas correspond?—In the case of the totally excluded areas with the Governor.

13,292. Direct with the Governor?—Certainly. In the case of the partially excluded area with the Governor so far as they are not working under the Provincial Government.

13,293. That is to say, with the Governor's personal secretariat?—Yes, that would be so.

Marquess of Salisbury.

13,294. Then, may I take the Secretary of State to the paragraph he referred to just now—paragraph 108—which deals with legislation? *Prima facie*, I gather that no Act of either Legislature, that is to say, the Central Legislature, or the Provincial Legislature, will apply to the partially excluded areas, but by leave of the Governor they may?—Yes, that is so.

13,295. But they may. That is the point, is not it?—Yes.

13,296. With or without amendment. When the Viceroy gives leave he may say: "Subject to such amendments"?—Yes.

13,297. He has complete control in that way?—Yes.

13,298. Now, in those circumstances as we have to contemplate the case when legislation may apply to them, would the Secretary of State kindly look at paragraph 109 where he will see, I think, that there is a drafting point which has got to be borne in mind?—I only call attention to it because it leads to something else. It reads like this: "Rules made by the Governor in connection with legislative procedure will contain a provision prohibiting the discussion"—as it reads literally, he must prevent all discussion. That is clearly inconsistent with what we have just been saying in No. 108, that in certain circumstances the legislation may apply. It should be "may," not "will"?—I think Lord Salisbury is not drawing a distinction between the totally excluded areas and the partially excluded areas.

13,299. I am speaking of the partially excluded areas?—In the case of the totally excluded areas discussion is barred. In the case of the partially excluded areas discussion can be allowed under the provisions of paragraph 109.

13,300. So it only applies to the Excluded Areas, but then there is a sentence at the end: "enabling the Governor, at his discretion, to disallow any resolution or question regarding the administration of a Partially Excluded Area"?—Yes.

13,301. So I understand (I think that is a complete answer) that it will be in his power to allow it in the Partially Excluded Areas?—Yes, for this reason, that in the Partially Excluded Areas the administration will be to some extent under the Provincial Government, and it therefore seemed to us justifiable to draw a distinction between a discussion raising questions of the Provincial administration and a discussion for which only the Governor himself was responsible.

[Marquess of Salisbury.] I am much obliged. The Secretary of State has entirely disposed of that drafting point.

Archbishop of *Canterbury*.

13,302. May I just ask a supplementary question upon that? Is it meant by paragraph 109 that the Governor is totally prohibited from allowing any question to be asked in the Provincial Legislature on a matter affecting an Excluded Area, or is it only giving him power at his discretion to prohibit?—In the case of a Totally Excluded Area discussion is barred. In the case of a Partially Excluded Area discussion is admissible.

13,303. So that not even any question could be asked in the Provincial Legislature on a matter which would affect an Excluded Area. I can imagine cases arising where the question would be very natural?—That is our present intention. It has been urged upon us that discussions may be very dangerous in their reactions upon some of these very wild districts. I gather that the experts who gave evidence last night at the Subcommittee very much emphasised that reason, and it is because of that that we are nervous of discussions about the affairs in a Totally Excluded Area. After all, there is only one Totally Excluded Area in the whole of India, namely, the hill tracts of Assam.

13,304. But, of course, the Governor would have perfect power to say, "This is a question which it is not expedient to ask," and then it is ruled out; but this would prohibit him in any sense from allowing a question even if it was a natural and inoffensive one?—Yes. It is one of those difficult questions where a good argument could be made on both sides. I think I might say in reply to His Grace that you do not want to create grievances of people wishing to ask a question and every time the Governor having to tell the questioner that he cannot ask it. But it is one of those difficult questions, I quite admit. We have been very much influenced by the opinion of the men who have actually been administering these Backward Districts, and they lay great stress upon the danger of questions and of discussions reacting upon these more or less uncivilised tracts.

[Mr. M. R. Jayaker.

13,305. Then under paragraph 109, as you stated, Secretary of State, it is not

permissible to the Governor to make a rule, making it depend upon his discretion to allow discussion or asking questions?—Not for a Totally Excluded Area. For a Partially Excluded Area, yes.

13,306. I am speaking of a Totally Excluded Area?—No, under paragraph 109 it is not.

Marquess of *Salisbury*.

13,307. At any rate we are quite clear that in a Partially Excluded Area there may be discussion in respect of the Partially Excluded Area?—Yes, with the Governor's approval.

13,308. If the Governor permits it?—Yes.

13,309. By that the Secretary of State, of course, means that in respect of those areas his Ministers will have the right to approach him on a subject and advise him upon it?—Yes. He could act at his discretion.

13,310. They will, therefore, have access to him on all these subjects?—Yes.

Marquess of *Reading*.] May I ask one question on that?

Marquess of *Salisbury*.] If you please.

Marquess of *Reading*.

13,311. As I understand the language of paragraph 109, Secretary of State, the Governor only intervenes if he wishes to disallow; it is not a question of his having to give permission. I am dealing only with the Partially Excluded Areas. There is no question there of his having to give permission for a question to be asked. As I read the rule, it means that he has the power to disallow a question or to disallow discussion?—That is so.

13,312. But in the ordinary course, as I read this rule, there will be the right to discuss and the right to ask a question and it will only be when the Governor at his discretion thinks that the question should be disallowed or the discussion prohibited he would then intervene; that is right, is it not? I read it so, because we were discussing it on the basis just now that there could be no discussion unless the Governor allowed it in an Excluded Area. I was pointing out that if I read Rule 109 aright that

is not so. It is the Governor's discretion to disallow?—In the case of partially excluded areas.

13,313. I am only speaking of that?—Yes, that is so.

Marquess of *Salisbury*.

13,314. And if the Ministers may advise, then it also follows that the members of the Legislature themselves may ask to be allowed to discuss it?—Yes.

13,315. And, in point of fact, there will be discussions and ought to be discussions upon the partially excluded areas?—I think there might be. The Provincial Administration, as I say, will be functioning in the area. You could not withdraw that field totally from the discussions of the Provincial Legislature.

Earl *Peel*.] But the discussion I suppose will be only so far as the Provincial Government has authority over the partially excluded areas. It will not apply to that portion of the administration which is restricted to the Government. It will not apply over the two fields.

Marquess of *Salisbury*.

13,316. It will not apply to the excluded areas?—It will not apply to the totally excluded areas but there will not be two kinds of Government in the partially excluded area. There will be the Provincial Government controlled to the extent that the Governor thinks fit.

Earl *Peel*.

13,317. I gather that in the partially excluded areas there was a sort of divided authority, was there not?—No, the administration is the Provincial administration, but subject to these safeguards in the hands of the Governor.

13,318. So there might be no restriction therefore?—No, there might not be.

Marquess of *Salisbury*.

13,319. This question might arise out of what Lord Peel has asked the Secretary of State: Could he give us some idea of in what respect an area would be dealt with as partially excluded? Would it be, say, law and order excluded, or would it be a certain area of subject excluded, or a certain territorial area



excluded?—No, it would not be a territorial area; it would be the exclusion of certain subjects. Let me give Lord Salisbury one or two cases that occur to me. The kind of cases that might make a great deal of trouble in these areas would be cases dealing with the transfer and possession of land. The Governor, probably, would exclude the Provincial legislation or the Provincial type of administration to that extent from the backward tract. Again in the case of the administration of the police; in certain of these areas, I am told that law and order is very effectively maintained by the headmen of the villages. In an administrative case of that kind, I imagine that the Governor would exclude the ordinary police administration from the backward tract.

13,320. But, in respect of all these subjects which are excluded, the Ministers would be in a position to approach the Governor and advise him to make changes?—Yes; in a partially excluded area they would be.

13,321. That would be so. And the members of the Legislature in the same way, unless they were definitely forbidden from discussing it, might press the responsible Government to approach the Governor?—Yes.

13,322. I only want the Committee to have it quite clearly in their minds. Even in the case of partially excluded areas, and even in those parts of the administration which are excluded, there the local legislatures and the local government would still have an opportunity of access and influence. That is what is intended?—Yes, and Lord Salisbury will remember that they do have that access now. In all the partially excluded areas in our scheme there is possible this kind of discussion and influence now. In the partially excluded area, we are really going on very much with what is the present proceeding.

*Archbishop of Canterbury.*

13,323. Secretary of State, just one question on paragraph 106; "His Majesty will be empowered to direct by Order in Council that any area within a Province is to be an 'Excluded Area' or a 'Partially Excluded Area.'"

Would that mean that the Governor would consult the Provincial Legislature on the matter before he came to this decision, or would he decide entirely, so to say, off his own bat?—The object of paragraph of 106 is really this: I think we intend, subject to what the Committee say, to put in a schedule of these totally excluded areas and of the partially excluded areas in some form in the Constitution Act. The kind of contingency therefore that His Grace contemplates would not arise. It will be in the Constitution Act; but it is necessary to have provisions for making future alterations in the boundaries. We do not contemplate that it will be necessary in the future to bring in new tracts; we rather contemplate that as the standard of living rises in some of these tracts, so it may be possible in the future to bring them more under the general administration, but, apart from that, I think it is necessary to have some power residing in the Governor-General and the Governor to make alterations of a small kind in the actual Frontiers, and nothing more than that is contemplated under paragraph 106; but if the Committee thought fit, I think there is a good deal to be said for having a schedule of these areas actually in the Act. It will then show that the framers of the Act have no intention of withdrawing large tracts of territory from the ordinary administration in India, and it will also show definitely the kind of tracts that we have in mind.

13,324. Any such schedule would be subject to power given in the Act for revoking or altering the schedule?—That is what paragraph 106 does.

13,325. That would be included in the Act?—The form, your Grace, that it would probably take, would be that of an Order in Council; the form which the revocation of any provision, including those relating to backward tracts, would take, would probably be that of an Order in Council.

13,326. But the power to vary the schedule which would be included in the Act would be safeguarded in the Act itself?—As at present proposed, it would rest with the Governor and the Governor-General.

*Marquess of Salisbury.*

13,327. I think His Grace means that if it was put into the schedule there would be words in the Act giving power to apply paragraph 106 even in the case of a schedule to an Act of Parliament?—Subject to what restrictions Parliament liked to put upon those powers. It might define the power of alteration as the power of altering small details of boundaries, and for any bigger question it might prescribe the procedure of Order in Council here.

*Sir Austen Chamberlain.*

13,328. Paragraph 106, as I read it, deals entirely with Orders in Council?—Yes.

13,329. "His Majesty will be empowered to direct by Order in Council"?—Yes.

13,330. Or by an Order in Council to vary those orders?—Yes.

13,331. "His Majesty in Council" means His Majesty advised by the Secretary of State?—Yes.

13,332. Then the Secretary of State has once or twice said: "The Governor-General or the Governor"?—Yes.

13,333. "Advised by the Governor-General or the Governor"?—Yes.

13,334. But it is not proposed, is it, that there should be any Orders in Council issued on the advice of the Viceroy? The authority to tender advice to the King would be the Secretary of State?—That is so.

13,335. And, in so far as the Viceroy or the Governor comes into it, it is as an adviser to the Secretary of State?—Yes, at his discretion, that is to say.

*Lord Hardinge of Penshurst.*

13,336. Should that not be defined?—It would have to be defined in the Act, no doubt.

*Marquess of Zetland.*

13,337. Secretary of State, paragraph 107, the first two lines, clearly refer to partially excluded areas in which the Governor will be declared to have a special responsibility. The next two lines in the same paragraph appear to deal with wholly excluded areas: is that so?—Yes.

13,338. With regard to the administration in the partially excluded areas, there will be, as I understand it, a system of dual control?—It is control subject to the Governor's supervision. There would not be two administrations. There is one administration applied to the backward tract in the way that the Governor says it should be applied.

13,339. Yes, but I am looking at the question from the point of view of the District Officer?—Yes.

13,340. In the case of a partially excluded area, will the District Officer correspond exclusively with the responsible Government, or will he correspond in respect of certain subjects direct with the Governor to the exclusion of the responsible Government?—He would carry out the Governor's instructions as to how he should correspond. The Governor would be perfectly free to make what rules he thought fit.

13,341. I see. Then the Governor might instruct the District Officers to correspond direct with him in respect of certain subjects of the administration. Is that so?—He might, certainly, if he wished. I imagine what would happen (I do not know what Sir Malcolm would say about this) would be that he would ask to be informed upon certain categorical types of questions, and he would ask to have certain papers always sent to him and to be kept informed, to take a concrete instance, when the man on the spot disagreed with what people were trying to make him say.

*Sir Hari Singh Gour.*

13,342. Is that your conception of the Governor-General's special responsibilities generally?—No, I am dealing now with the partially excluded areas.

13,343. Yes, but that is covered by paragraph 70, clause (f). Are your remarks confined only to paragraph 70, clause (f)?—Yes. I am dealing now with the excluded areas only. (Sir Malcolm Hailey.) I think that we might envisage the partially excluded areas as under ordinary district administration in all their incidents, but with the power to the Governor to override Ministers in discharge of the special responsibilities for those areas, and in pursuance of that power he might give directions that particular classes of

cases referring to those areas should always come to him. I would myself imagine that they would come up in the ordinary way to the Secretariat, but the Governor, in order that he might be kept informed as to what was happening in those partially excluded areas, would direct that certain classes of cases should always come to him after they had been seen by the Minister, and in that way he would be able to discharge his special responsibilities and, if necessary, override the Minister. But for all ordinary purposes those partially excluded areas would be part of the general administration, that is, for administrative purposes, but for legislative purposes there might, under the provisions of paragraph 108, be certain Acts which did not apply to them or, under the second part of paragraph 108, there might be special regulations which did apply to them. That is for legislative purposes; but I have described the position above for administrative purposes as being one of ordinary administration subject to any special orders given by the Governor in discharge of his special responsibility.

*Marquess of Zetland.*

13,344. I think I see how it would work in practice. What you have said would apply, would it, to the administration of a special regulation passed by the Governor for a partially excluded area? What I mean is this: Supposing the Governor enacts a special regulation for a partially excluded area, the administration of that regulation would come in the first instance to the Secretariat of the responsible Government?—Yes.

13,345. But it would have to come up to the Governor in addition to that?—Yes.

*Lord Rankeillour.*

13,346. Secretary of State, just go back for one moment to the point Lord Salisbury made. The word "provisions" in paragraph 70, I think it is, really means the regulations; it is the same thing as the regulations under paragraph 108, is it not, or does it contemplate anything else?—(Sir Samuel Hoare.) I do not quite follow the question.

13,347. Paragraph 70 (f) states: "The administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas". Those provisions are really the same thing, are they not—I ask the question—as the regulations under paragraph 108?—Paragraphs 106-109.

13,348. I meant particularly that the Governor would be empowered to do various things and you use the word "regulations"?—Yes, but it is wider than paragraph 108; it is paragraphs 106-109.

13,349. It refers to what will be provisions in the Act as well as to regulations of the Governor and Orders in Council?—Yes. It refers to all the powers in paragraphs 106-109.

*Archbishop of Canterbury.*

13,350. Might I supplement that. Surely as paragraph 70 (f) is drafted, these provisions merely refer to the declarations of certain areas to be partially excluded areas. It is "in accordance with provisions in that behalf"—that is the declaration of certain areas to be partially excluded areas. It does not refer as it stands to paragraphs 106-109?—I think His Grace is right. It does specifically deal with paragraph 106, but it is intended to bring in paragraphs 107, 108 and 109 by inference.

13,351. Then paragraph 70 (f) does not quite carry out what is intended as it is drafted?—I will certainly look into the question of drafting. I think it does but I will look into it.

*Lord Rankeillour.*

13,352. I think that is cleared up as far as it can be cleared up for the moment. Would it be true to say, speaking very generally, that the position of the Governor with regard to an excluded, or perhaps to some extent, to a partially excluded area in a Province, would be very similar to that of the Governor-General with regard to reserved services. There would be an analogy between the two?—There would be an analogy certainly between the Governor-General with the reserved services and the Governor with the totally excluded areas, but not the Governor with the partially excluded areas.

13,353. Except in regard to certain subjects which were therein reserved to him under his own regulations?—Yes; but I do not think that makes an analogy. The things are really in different categories. In the one case, departments are actually reserved; in the other case, they are not, and I think the analogy is between the Governor-General with the reserved departments and the Governor of the Provinces with the reserved areas.

13,354. Would you say that paragraph 23 on page 12 of the White Paper would really apply in the Provinces? It says "Although the reserved departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these departments in isolation from the other activities of his Government, and undesirable that he should attempt to do so, even if it were in fact possible". Would he not have to explain and discuss his policy with regard to excluded areas with his Provincial Ministers?—I think in the case of Partially Excluded Areas certainly and in the single case of the one Totally Excluded Area, just as much as he wished to. I do not at all want to see an irrevocable division between the two. The whole basis of our proposals is assumed to be the basis of co-operation.

13,355. There might be persons who would have their representation in the Province who might have interests in the Excluded or Partially Excluded Areas, and naturally they would press him on his policy with regard to them?—Certainly, and that is the case now.

13,356. What would be the difference between the Governor's power in a Totally Excluded Area and the Chief Commissioner's power in a Chief Commissioner's Province?—The Chief Commissioner in the Chief Commissioner's Province is really much more a Federal officer at the head of a Federal unit.

13,357. You only propose to have one Totally Excluded Area, do you not?—That is our proposal.

13,358. Is there any advantage in having that attached to the Province at all rather than the Commissioner's Province? Is it not large enough?—The

whole basis of our proposal is that this particular area is so distinct in many ways from the rest of India that it has to be excluded altogether from the ordinary administration. A Chief Commissioner's Province does not go half as far as that.

13,359. Then the Governor of Assam, I suppose it would be, would have certain powers in this area or a Chief Commissioner would have in Baluchistan, would he?—It is very difficult to draw a close analogy, because Baluchistan is such a very unique territory in many ways with the interlocking of the Indian States and so on, and the tribal tracts.

13,360. Then in the Andaman and Nicobar Islands, I would say?—He would have greater powers.

13,361. Might it not (I do not ask you for a direct answer to this question) be desirable, having regard to the very special circumstances of this area and the fact that it will require greater powers, that he should not be open to any kind of pressure from the Provincial Legislature and Ministers?—That is just the object of paragraph 109.

13,362. But might not it be better secured by putting it under a Chief Commissioner with perhaps wider powers?—I think exactly the opposite would be the result, and I think by making it a Commissioner's unit you will then bring it into exactly the same kind of category as these other Commissioners' units, in which there would be likely to be much more influence and interference brought to bear from the politicians.

13,363. Federal pressure in the Chief Commissioner's Province?—It does not matter which. If Lord Rankeillour has in his mind a preference for bringing an area like this directly under the Governor-General and taking it out of the Governor of the Province, I think he will find that that change would be a mistake, for this reason: It is very important for these districts to have people dealing with them who really know in detail the local social and economic conditions. We are definitely of opinion, after some of the most expert opinion upon it, that they are much more likely to be treated sympathetically and intelligently if directly connected with the Province, that is to say the Governor

of the Province, rather than with any more centralised machinery. Our proposal is definitely, as we believe, in the interests of the Backwards Tracts.

13,364. I may say that all I was driving at was that it should be rather the special responsibility of the Governor-General than be mixed up with any Provincial politics?—I do not think it is mixed up with any Provincial politics. Under paragraph 109 we have gone as far as we can to prevent it being mixed up with Provincial politics.

13,365. It is just a matter of opinion. You have come to the conclusion that the special interests will be protected in that way?—That is the definite view of the people I have consulted both on the spot and here.

13,366. Then might I ask for a moment about the internal powers of the Governor. For instance, will he be able to have his own special police force for the Excluded Areas which work under him directly?—He could have whatever he wanted.

13,367. And the money for that will be non-votable?—Yes.

13,368. Now the only other thing I want to ask you is this. I presume that in various places there are groups of scattered aboriginal tribes which it would be impossible to make excluded areas, and yet you might want completely to exclude them from the ordinary Provincial Government. Could you have anything in the nature of some special inspection or protection of them?—I cannot think of any group of that kind that it would be likely that we should want to exclude from the Provincial administration. There is at present a procedure to deal with these scattered bodies of backward people under an Act called the Scheduled Districts Act of 1874, and I think in any new constitution there would have to be similar powers of that kind. The difficulty, Lord Rankeillour will see, is really a practical difficulty. You have got these small bodies of people scattered in and out of the ordinary life of a Province. Practically it would be quite impossible to exclude them from the Provincial Legislature. What you can do under this Act is to ensure that there is special treatment for them,

13,369. Will that be definitely continued in the Constitution Act?—(Sir Malcolm Hailey.) The Scheduled Districts Act of 1874 is an Indian Act, Sir, and, subject to anything that may be said in the Constitution Act, that would still remain in force. The Committee may have to consider afterwards how far they would provide specially for the continuation of that Scheduled Districts Act. If I might explain it to the Committee, the effect of that Act is that in regard to certain areas referred to in the Act the Local Government can, with the permission of the Governor-General, restrict the application of certain Acts or apply new Acts to it only with modification, so that where you have scattered tribes like the Gonds and Bhils and tribes which are widely scattered in some parts like the Central Provinces you can by that provide that land legislation, for instance, shall only apply to them in a particular way, and it might be necessary, in considering the Constitution Act, to say how far the Scheduled Districts Act should be modified or not.

Lord Rankeillour.] You might put a clause in the Constitution Act continuing certain Indian Acts specified in a schedule to the Constitution Act, might you not—incorporating them. That would be a subject for consideration.

Marquess of Salisbury.

13,370. Let us be clear about this. What I understood from Sir Malcolm was that this power is in the hands of the Local Government?—Subject to the issue of notification by the Governor-General in Council.

13,371. So that, if it were simply embodied in the Constitution as it stands, that would be in the power of the responsible Government of the Province?—Yes.

Lord Rankeillour.

13,372. I think you have specially in your mind, have you not, Sir Malcolm, cases such as the law relating to foreclosure and restraint and such like matters?—Yes.

13,373. Might it not be desirable to put a more definite provision as part of the Constitution, perhaps on the motion of the Governor, applying the provisions you

want; whether they are in the Depressed Classes Act or not, to the partially excluded areas?—(Sir *Samuel Hoare*.) Lord Rankeillour, if I may intervene, I think is raising a new point. In the partially excluded areas we retain these powers.

13,374. You have retained them,?—We have, yes.

13,375. Under the Depressed Classes Act?—Under the partially excluded areas the Governor is free to apply what legislation he likes at his discretion. I understood Lord Rankeillour to be dealing with the difficult case of scattered backward tribes who are not inhabiting excluded areas at all.

13,376. Yes; and I think my last question ought not to have been “partially excluded”—I meant the scattered tribes. What I was asking was: Could not provisions for their protection—whether there are enough in the Depressed Classes Act or not—be incorporated in the Constitution Act?—(Sir *Malcolm Hailey*.) It would require a rather careful study of the exact provisions which would have to be undertaken.

Archbishop of *Canterbury*.] May I ask what Lord Rankeillour means by the Depressed Classes Act?

Lord *Rankeillour*.] I meant the Scheduled Districts Act—I beg your pardon.

Sir *Hari Singh Gour*.

13,377. Are not there already provisions in the various local Acts protecting these backward classes and tribes like the Gonds and Bhils?—In some cases there are, but there are some tracts of country like the Kumaun Division of the United Provinces, where the Scheduled Districts Act applies, and under that Act there have been certain restrictions on the powers of the Civil Courts. It was those cases that I was thinking of. They are not very numerous because actually the areas now under the Scheduled Districts Act correspond fairly closely with the areas which it is proposed to bring under the definition of partially excluded areas, but there might be some cases lying outside those to which I understood Lord Rankeillour alluded, which might have to be provided for by some such provision as the Sche-

duled Districts Act. That would require examination in detail to see how far they still exist.

Lord *Rankeillour*.] If the point is seized, I will not press it any further.

Sir *Reginald Craddock*.

13,378. Secretary of State, I had been intending to put some questions about the Scheduled Districts Act. That has already been dealt with to a great extent, but I want to know whether a partially excluded area means exclusion from the Constitution Scheme; that is to say, would they be constituencies in those areas, or would they be excluded from sending representatives to the Legislative Council?—(Sir *Samuel Hoare*.) They would be, Sir Reginald, in the same position as they are now. I am told that in certain cases they are divided into constituencies; for instance, I believe, in some parts of Chota Nagpur. That presumably would continue, but it would be for the Governor to use his discretion as to whether it should continue and as to how far it should continue.

13,379. Supposing he did not consider that the inhabitants of an area of that kind were really fit to exercise the franchise, would not he be able to nominate somebody to the Legislative Council who would be able to represent in that Council the interests of those aboriginals; for example, I believe that in Bihar and Orissa, for some considerable time, the interests of the aboriginals were served on the Council by the nomination of a missionary?—(Sir *Malcolm Hailey*.) Perhaps I might, just for the information of the Joint Select Committee, point out that there is in paragraph 172 of the first volume of the Statutory Commission's Report a certain amount of detail given as to the existing representation enjoyed by what would in future be called the partially excluded areas. It says, for instance, that in Bihar and Orissa the aboriginals have in three of the constituencies a definite preponderance, and have elected two of their own Members in three of those constituencies.

Chairman.

13,380. Will you give me that reference again, Sir Malcolm?—It is at page 160,

my Lord Chairman. Whereas in the remaining seven constituencies the representatives are not those of the aboriginal classes at all. So with regard to Madras and with regard to Assam it gives details of the existing representation. It is provided in the White Paper that there shall be special representation for the local Councils, for the backward areas, on page 93. It is proposed there, for instance, that in Bihar there should be as many as seven special representatives and nine in Assam. (Sir *Samuel Hoare*.) We have not specified as to how those representatives should be selected.

*Sir Phiroze Sethna.*

13,381. They will not be nominated?—We have not made any specific proposal.

13,382. There is to be no nomination in the Provincial Legislature?—That is what we have generally said. Generally speaking, that is the case, but it should be noted that in Appendix III at page 91, sub-section (7), we have stated that in those exceptional cases the method of filling seats assigned to representatives from backward areas is still under investigation and the number of seats so assigned would be regarded as provisional. I would like the Committee and the Delegates, if they would, to regard this as a very exceptional case and not necessarily apply to it all the principles that might be applicable everywhere else. It is a definite exception.

*Mr. M. R. Jayaker.*

13,383. Does the White Paper give them representation in the Federal Legislature? If you will kindly turn to page 90, Appendix II, where you have got a list, at the bottom of that list on the left-hand column is the heading: "Non-Provincial"?—Yes; we do not give them any representation in the Federal Legislature.

13,384. You do not include them in the words 'Non-Provincial'?—No.

13,385. I want, therefore, to know that they are not mentioned anywhere in this list?—They are not mentioned purposely. We somehow felt that one or two representatives in the Federal Legislature really would not effectively represent their interests.

13,386. I am asking this question because I have a recollection that the Statutory Commission recommended that they might be given one or two seats in the Central Legislature. That is my recollection?—Be that as it may, it is really a question for us to consider whether one or two selected persons from these admittedly very backward areas, with very little in common with the Federation as a whole, are really going to advance the interests of the backward tracts.

*Sir Phiroze Sethna.*

13,387. The same argument would apply to the Provincial Legislatures?—I do not think so, because in the Provincial Legislatures you can give obviously a more effective representation; in the Federal Legislature obviously they could not have more than one or two, whereas in a Provincial Legislature, for instance, Bihar, we suggest they should have seven, and that is an effective body.

*Dr. B. R. Ambedkar.*

13,388. In Assam, there are nine?—In Assam there are nine.

*Sir Reginald Craddock.*

13,389. You mentioned, Secretary of State, that the only totally excluded areas outside the North-West Frontier, and so on, were to be found in Assam. There are also the Chittagong Hill tracts about which I have no doubt Lord Zetland would know, but, as they are on the borders of Burma near the Arakan Hill tracts, they would fall into the same category as the excluded portions of Assam, and the same no doubt would apply to the similar areas in Burma?—I do not know whether Sir Reginald is asking me a question. If so, I am not quite sure what it is.

13,390. I wondered whether when you said "confined to Assam," you had in mind also the Chittagong Hill tracts and the parallel areas in Burma?—Yes, I had first of all in mind the Chittagong area and, under our proposals, we treat that as partially excluded and not totally excluded. We think it does differ in some respects from these rather wilder hill tracts in Assam. As to Burma, I think

we had better discuss the Burma excluded areas when we come to the more detailed consideration of Burmese questions.

13,391. The only reason I mentioned that was because one of the witnesses yesterday put forward the plan that geographically and administratively there were certain areas which are now included in Assam which had better be brought under the same administration as the parallel areas on the borders of Burma. I have mentioned this because it interested me. The suggestion came from an Assam officer. I should not have dared to suggest it even?—I am always a little nervous of starting upon a new delimitation of Frontier Provinces, and so on. I do not know what Sir Malcolm Hailey would say from his experience on a point of that kind. (Sir *Malcolm Hailey*.) The definite suggestion made was that there were certain areas in the Assam Hill tracts which were so similar to neighbouring areas in Burma that it might be possible to constitute a new Chief Commissioner's charge taking up both the Assam and the contiguous Burma tracts. I think that would be a point upon which the Government of India would have to be consulted, particularly with reference to the strategic position and also the question of communications, before it would be possible for the Secretary of State to commit himself to any opinion at all.

*Sir Hari Singh Gour.*

13,392. And not forgetting the question of finance?—The communications are of extreme difficulty there.

*Major Attlee.*

13,393. Was the suggestion a Sub-Province of Burma?—Yes, a Sub-Province which would probably, according to the witness, have to be administered from Burma, but if Burma is to be separated, the whole question of the strategic position on the North-West Frontier would have to be taken into consideration.

*Chairman.*] It is perhaps doubtful whether that matter can usefully be pressed any further this morning, Sir

*Reginald Craddock.*

13,394. There was another point which was raised yesterday upon which I should very much like to put a question to the Secretary of State. In the Central Provinces, these aboriginals are, you might say, scattered in almost every district of the Province, and, indeed, in Berar too the Korkus are a special aboriginal class. All these areas are included in certain special districts of the ordinary law, and administration goes on in those areas and always has, but, at the same time, the interests of the aboriginal and backward tribes are apt to be sacrificed if you do not have some measures for protecting them. In the Central Provinces, there was recently a measure to prevent the alienation of land, to protect them and their lands from alienation. That was certainly right, and certainly should have been done earlier, but one of the reasons why you do not get legislation of that kind put forward is that the communities themselves are so scattered under entirely different officers that cases for the necessity do not come to light until a great deal of the mischief has already been done. The two witnesses yesterday, who were extremely anxious about the welfare of these tribes both in and outside the forests, wanted some special protection for them. It can hardly be geographical except in a few cases like the Chanda Zemindari, but it requires all the same someone who is specially charged with that duty, and I put it to the witness, and I also ask the Secretary of State about that, whether he would also take into consideration the possibility of attaching to the Governor's charge such a post as that of superintendent of aboriginal tribes. It would only want one officer of that kind who would visit all these places in the Provinces, and see how far the interests of those tribes were being looked after by the several District Officers into whose charge they happened to fall. Such an officer would then keep the Governor informed of any measures that were necessary for the protection of these tribes, whether as regards liquor laws, which would have to be very carefully extended towards these areas, or money-lenders, litigation, and so forth. One point that the witnesses made was that there were tribal customs and laws of



these tribes, but such laws had not been recognised, and they were dealt with under the ordinary law, mainly that applicable to the Hindus. I wanted to know whether the Secretary of State would be prepared to consider an appointment of that kind on the Governor's charge?—(Sir *Samuel Hoare*.) The difficulty is that Sir *Reginald*'s proposal really goes a very long way, and it might go further than I think he would desire. He admits himself what is the state of affairs now, namely, that these scattered people are also subject to the ordinary law of the Provinces.

*Sir Hari Singh Gour.*

13,395. Modified by special laws acting in their favour?—The Scheduled Districts Act and other Acts.

13,396. And modified by special laws acting in their favour?—And by special local laws enacted in their favour. It is going a long way to give the Governor a special officer acting under him with a responsibility for dealing with questions that really cover the whole administration. That is the practical difficulty. I would have thought myself that the way to deal with these scattered people is rather on the lines of the Scheduled Districts Act and the existing local legislation, rather than to set up that kind of special organisation, but I do not know what Sir *Malcolm Hailey* would say about it. (Sir *Malcolm Hailey*.) I gather that the proposals made by the witnesses yesterday and, to a certain extent, endorsed by Sir *Reginald Craddock*, were that there should be a special adviser for the Government in regard to these particular people in their particular areas. It was not, as I understand, the intention to give the Governor any special powers, nor was it proposed to bring these special areas under regulation as partially excluded areas. The matter was one for advice only.

*Sir Reginald Craddock.*

13,397. Yes, that is so, Sir *Malcolm*. What is required is a peripatetic officer who would find out the actual facts in these various places, find out whether the various officers concerned in the administration were looking after or failing to look after the interests of these

tribes and bring those facts to the notice of the Governor who would then take action or not as he thought fit. It is a question of intelligence and information about these tribes more than any interference with administration, except in so far as the result of such reports might lead him by means of the Scheduled Districts Act or in exercise of his own responsibilities to such people to take action for their better protection?—If I might say so, Sir, I think that that is a point which might well be considered as a recommendation, though it is a decision that would have to rest with the local government itself.

13,398. Yes?—The local government in effect would be creating an officer similar to that which has been created in some Provinces for looking after the special interests of depressed classes; in others, for looking after the special interests of labour, and, in one Province, for looking after what are known as the criminal tribes. Most of those officers are advisory, and their posts were created by the local government themselves in order to obtain the necessary information and advice.

*Mr. M. R. Jayaker.*

13,399. Might I just clear up one point which has been raised which arises out of the questions put by Sir *Reginald Craddock*. Under the White Paper Scheme, as you have it here, there is nothing which allows the Governor to enjoy special responsibilities over any backward tract unless that backward tract is declared to be a partially excluded area?—That is so.

13,400. Or a totally excluded areas?—That is so.

*Marquess of Salisbury.*

13,401. Is that quite clear, that outside an excluded or partially excluded area the Governor has no special responsibilities to look after the aboriginal tribes?—Save in so far as it might come under any of his special responsibilities described in Proposal 70.

*Archbishop of Canterbury.*

13,402. But these deal only specifically with partially excluded areas. Mr. *Jayaker* has just anticipated the difficulty which I have. I understand there

are these what may be called special areas which are dealt with now, I understand, under this particular Scheduled Districts' Act, but they are quite different from partially excluded areas. The Governor has a special responsibility for partially excluded areas, but I think Mr. Jayaker is right; there is nothing in the White Paper to give him any special responsibility over these special areas?—That is so (Sir Samuel Hoare.) The answer is that it is so as His Grace suggests.

Marquess of Zetland.

13,403. Might not that come under paragraph 70 (b)? Might they not be regarded as minorities?—They might be minorities, but it is also conceivable that they might be majorities in a particular district.

13,404. Not all over India?—Might they not be a majority in a Province?

Sir Phirozé Sethna.] Never in a Province.

Mr. M. R. Jayaker.

13,405. There is no provision like paragraph 108 with reference to minorities?—No.

13,406. Therefore, that provision can be applied to a backward tract only in the event of its being declared by His Majesty in Council as a partially excluded area?—Yes. (Sir Malcolm Hailey.) I described the officer as an adviser to the local government, not necessarily to the Governor, and I think that was Sir Reginald Craddock's own definition of him too.

Sir Reginald Craddock.

13,407. I only want to know whether the Secretary of State will consider any method of getting round or of extending the special powers of the Governor to cases of this kind. They are territorial in a sense but not in a compact sense. They come under the case under investigation simply because of the nature of the inhabitants and they might be found in a corner of one district or in a corner of another district, but they are so scattered that it is very difficult to treat them under the Scheduled Districts' Act, for example?—(Sir Samuel Hoare.) Certainly, we will look into the point. It has not been

absent from our minds. The difficulty is the practical difficulty of dealing with it.

Marquess of Zetland.

13,408. Secretary of State, surely it would be held to come under paragraph 70 (b), which says "In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of (b) the safeguarding of the legitimate interests of minorities." Surely, they may be held to be minorities in the Province?—We have always had in mind when we were dealing with minorities, the recognised religious communities, namely, the communities that have formed the subject of the various communal decisions. There is considerable practical difficulty when you get away from that conception. You then get into all manner of difficult questions, as to whether a particular body in one community are a minority, and so on, as to whether a particular party of people are a minority, and so on. That is our difficulty.

13,409. Arising out of that, have you actually drawn up a definition of "minority"?—We have never drawn up a definition of "minority," but in our discussions we have always assumed that the minorities meant the religious communities.

13,410. That may be so in our discussions, but when you are administering the Act, surely you have to have a definition of a minority if you are to administer it efficiently?—I am not quite sure whether it is so. I should like the views of the Committee upon a point of that kind, whether it is wise to make a rigid definition.

Mr. Zafrulla Khan.] On that point, Secretary of State, I was wondering whether you are correct in stating that it has been in the discussions assumed that the minority should be so restricted. If you will kindly turn to page 18 of the First Report of the Round Table Conference, paragraph 16, which deals with this matter, so far as the Governor-General is concerned, you will find that the expression there used in the last three lines is "serious prejudice to the interests of any section of the population must be avoided." That is where

this particular safeguard started from. Then, if you will kindly look at page 28 of the Third Report of the Round Table Conference, paragraph 7 (ii) "it was generally agreed that they should be the following: (ii) the protection of minorities." There is a note on that at the bottom of the page which says that "Mr. Zafrulla Khan proposed for the wording of (ii) 'the avoidance of prejudice to the interests of any section of the population';" so it was not assumed throughout that minorities should be restricted in the way you suggested.

*Dr. B. R. Ambedkar.*

13,411. Also the fact that they are included in the Communal Award by having a certain number of seats assigned to them. Would that not also bring them under the definition of "minorities"? I mean if, as you said just now, the minorities would be those communities that are covered by and included in the Communal Award, I should imagine the Backward Classes also would be included in the Communal Award?—I think after this discussion I had better look once again into this very difficult question of these comparatively small bodies of people scattered about outside the Excluded Areas, and perhaps Members of the Committee and the Delegates will also think over the best way of meeting what appears to be a rather general desire.

13,412. Might I draw your attention, Secretary of State, to the peculiar position occupied by the Criminal Tribes. The Criminal Tribes are more or less scattered in the general population. I am speaking of the particular experience of Bombay; I suppose it is so in other Provinces. Now in order to protect the Criminal Tribes, which are, as I say, scattered in the general mass of the population, there is, I think, a Government of India Act called the Criminal Tribes Act. I am giving an illustration in order to suggest a method of protecting them. That Act gives the Governors some powers to make regulations with regard to the movements of these people and their interests. Would it not be possible for the Governor under paragraph 108 to pass some such regulation affecting the mode of living or protection of these people, although they may

be scattered?—It would only be possible under these clauses in the Excluded and partially Excluded Areas.

13,413. What I wish to put to you is this: Would it not be open, for instance, to the Governor under paragraph 108, once he has got a definition of a person belonging to a tribal area or an aboriginal class, to make certain legislation affecting him whether he stayed in the Excluded Area or whether he stayed in the population, as is the case with the Criminal Classes? The legislation of the Criminal Classes affects the members of the particular tribe no matter where he stays?—(Sir Malcolm Hailey.) The Criminal Tribes Act is no longer a Government of India Act. They have become matters of Provincial legislation. The Criminal Tribes Act gives to the Local Government not specifically to the Governor, power to control the movements, to register and restrict in various ways persons who fall within the definition of Criminal Tribes as notified by the Local Government. Therefore it would be difficult to apply that analogy to the extension of the special protection of the scattered aboriginals or Backward Classes. In any case, that is a matter which the local Legislature could undertake now of its own initiative. My point was that it gives no special power to the Governor as apart from the local government.

13,414. But under paragraph 108 the Governor could, for instance, by notification classify people as belonging to aboriginal or Backward Areas, and then pass legislation affecting them, no matter where they stayed?—(Sir Samuel Hoare.) I do not think he could do that under paragraph 108. Under paragraph 108 he could only deal with people living in the scheduled territory.

*Mr. M. R. Jayaker.*

13,415. May I mention in this connection that although there is a feeling in India that proposals 106 to 109 of the White Paper withdraw from the influence of the Legislative Council large tracts and large numbers of people who are unfortunate Indians and who are in a backward state of civilisation, may I assure him that if he goes on still adding to this principle by giving the power to

the Governor under paragraph 70 to deal as a special responsibility with Backward Tracts which are not declared to be Partially Excluded Areas, that feeling will be considerably increased?—We have tried to take into account every point of view, and I am aware that there has been considerable nervousness in India as to the extent of these areas. Having taken those views into account, and having also consulted the best expert opinion that was available from the tracts themselves, we think that our proposals are upon the whole sound ones; but I have always thought that somehow or other it might be a good thing, whether by application of the Scheduled Districts Act or some plan of that kind, to have done as much as we could to safeguard the rights of these small scattered communities. My difficulty has been to find a practical way of doing it in which in the first place you would not make a big issue between the Local Government and the attempt that was made with probably a disastrous effect upon the tribes themselves, and also at the same time to safeguard the interests of these people. It is a difficult practical question.

13,416. But the Acts by which they are at present governed are Acts of the Local Legislature?—Yes.

13,417. Those Acts do not remove them from the purview of the Local Magistrates?—No.

13,418. The suggestion was made that in those Backward Tracts which are not declared either Totally or Partially Excluded Areas, the Governor would have the power of taking them out of the Local Legislature by adding a clause to proposal 70 or by similar other provisions they will be removed from the influence of the Local Legislature?—What I have had in mind was some means of ensuring a continuance of the protection that they already receive under this Act of 1874 and under the various Provincial Acts.

13,419. Provided you give the power to the Local Legislature to give them that special protection?—Yes. I think what is in the minds of several members of the Committee is whether our obligation does not go somewhat further than that.

Marquess of Salisbury.

13,420. Yes?—Namely, to make some special provision under which these Local Acts will continue.

Lord Irwin.] If I may interject, I suppose, Mr. Jayaker, it might be argued that the Local Legislature of the future will differ in this regard in one vital matter, in that the official element will no longer be there, and therefore from that point of view it might be argued that if, as Lord Zetland suggests, it were thought desirable to extend the definition of minorities to allow the Governor in the last resort, if the Provincial Council were not doing its duty, to intervene, that special responsibility would be replacing the official element. That is what it amounts to.

Mr. M. R. Jayaker.

13,421. My difficulty is that I am not quite easy in my mind in assuming that the Local Legislatures would be indifferent to or unmindful of the special protection which these tribes desire. After all, these Acts are the Acts of the Local Legislature?—Yes. Let me disabuse Mr. Jayaker of any idea that he may have in his mind that this implies distrust of an Indian Legislature because it is an Indian Legislature. My distrust goes a good deal further than that. My anxiety is to prevent politicians, British Indians or anybody else, interfering with people whose conditions are so different as to make the political conditions really inapplicable to them. I should say exactly the same of the British House of Commons in distinctions of this kind.

13,422. But perhaps the Secretary of State is not aware that many of the class called politicians have been the prime movers in starting societies for the regeneration of these Backward Classes?—That is certainly so, but the natural inclination—here perhaps I am generalising from one's experience—of any democratic legislature is to attempt to impose uniformity upon everybody else, and it is just this attempt to impose uniformity that does make the trouble with people who are really living in quite a different world.

*Sir Austen Chamberlain.*

13,423. May I ask one question before this point is left? Secretary of State, do you propose at any time or when drafting the Constitution Bill to introduce a definition of minorities?—We have not so far contemplated putting in a definition.

13,424. I am not sure that I am right, but might not a case be taken before the Supreme Court which would turn upon the question whether somebody was a minority or not, and therefore whether the clause of the Act which was in dispute did or did not lawfully apply to it?—No, it cannot come into the Courts, Sir Austen, under the last paragraph of Section 70 at the top of page 56: "It will be for the Governor to determine in his discretion whether any of the 'special responsibilities' here described are involved by any given circumstances." That is intended to safeguard the position. Of course, Sir Austen, if a more precise definition is needed one might use the vehicle of the Instrument of Instructions.

*Marquess of Salisbury.*

13,425. You see, the word is so very wide now. Everybody belongs to a minority?—I think we have always contemplated that you would give instructions to the Governor-General and the Governors as to how he could apply those powers.

*Lord Rankeillour.*

13,426. It comes in under Section 18, too?—I have just said so.

*Lord Winterton.*] At the Third Round Table Conference we discussed this matter, and the result of our discussions was mentioned by Mr. Zafrulla Khan at an earlier stage at page 28. There in our Report, we actually said: "The actual terms on which the several items should be expressed formed the subject of some discussion, but it should be made clear in the first place with regard to the list that the actual wording of the items does not purport to be expressed here with the precision, or in the form, which a draftsman, when the stage comes for drawing a Bill, would necessarily find appropriate." That would

L109RO

seem to imply that the sense of our discussion on that occasion was that there would have to be some further definition.

*Major C. R. Attlee.*

13,427. Might I ask the Secretary of State further on that, does not it go to the whole question of the power of the Governor-General with regard to legislation? As Lord Salisbury says, everybody is a minority; every Act of Parliament damnifies some minority, and it is a very important point that there should be laid down some restriction?—Yes; but I would suggest that members of the Committee, before they form any final conclusion upon a point like this, should consider the alternative—whether it is not better that the direction should be given in the Instruments of Instructions. I think they will find when they come to make a precise definition of minorities it is very difficult. They may find that an attempt at definition will really do harm to what we have all got in mind, namely, that certain fairly recognised minorities should be safeguarded.

13,428. Will not that also involve a definition, and as the instructions can be altered from time to time that power of protecting minorities would be subject to the fluctuations according to the instructions from the Home Government to the Governor?—You see, Major Attlee, it does not take legal form in the instructions; it cannot be brought into Court. One wants to avoid the kind of contingency evidently felt by Sir Austen Chamberlain.

*Archbishop of Canterbury.*] That is an important point we have yet to consider with regard to the Federal High Court, is it not, Mr. Secretary of State, whether it should have any power of interpreting Instruments of Instructions and Instruments of Accession as well?

*Marquess of Reading.*

13,429. In so far as the Instruments of Instructions or of Accession are incorporated in the Statute, whether in the Schedule or not, they are part of the Statute and would be considered by a Court if the proper occasion arose. I do

not see how you can prevent that?—I should like to deal with that more general question when we come to the Federal Court.

Lord Winterton.] But does not the difficulty arise there of making it open to the Courts to discuss what His Majesty has said?

Chairman.

13,430. It might be more convenient, Secretary of State, if that matter were dealt with at a later stage when we are dealing with the Courts?—I think so.

Miss Pickford.

13,431. The Secretary of State has said that it is only contemplated that the Hill Tracts of Assam shall be a Totally Excluded Area?—Yes.

13,432. Leaving aside for the moment Burma, are there any areas which at the present moment are administered as Totally Excluded Areas which would under the White Paper be Partially Excluded Areas?—I think generally speaking the answer is, No; I think No covers it all, but there may be minor details.

13,433. I was wondering because of page 159 of the Statutory Commission Report, where it seems to put, for instance, the Chittagong Hill Tribes as a Totally Excluded Area and also an area in the Punjab?—The area in the Punjab is a very minute area which is so far away that nobody can administer it under any administration. Sir Malcolm Hailey tells me that nobody ever goes there, and they cannot get there because there is too much snow.

13,434. I was thinking more of the Chittagong Hill Tracts?—Yes, in the case of the Chittagong Hill Tracts we recommended that it should be Partially rather than Totally Excluded.

13,435. Then the position of that tract will be changed?—There is a change there. The change is really with Darjeeling and the Chittagong Tracts; Lahaul and Spiti for the reason I have just given; Angul comes into the Partially Excluded Area.

13,436. At present?—At present.

Sir Abdur Rahim.

13,437. Is the entire district of Darjeeling, including the seat of Government, Partially or Totally Excluded?—I am circulating a suggested list of the districts that we should propose to schedule as Totally Excluded or Partially Excluded Areas.

Miss Pickford.

13,438. Thank you?—We have taken into account very much the previous treatment of these districts; that is really what has guided us in distinguishing between one and the other.

Lord Eustace Percy.

13,439. Secretary of State, in preparing your list were you proposing to declare partially excluded areas covering any considerable part of the Central Provinces about which Sir Reginald Craddock was questioning you?—No, not any districts that are not already treated as backward tracts. There are no other districts.

13,440. But there are scheduled districts in the Central Provinces, are there not?—(Sir Malcolm Hailey.) There are certain districts which have come under the Scheduled Districts Act, but there were no districts which were notified under Section 52 of the Government of India Act as excluded. That is the present situation, and I understand the Secretary of State's intention is that no districts in the Central Provinces shall be notified as wholly or partially excluded in the future.

13,441. Then may I ask this question, or put to the Secretary of State this difficulty: I understand the scheme put before us by Dr. Hutton yesterday, and those who think like him, to be that wherever you have a compact backward population the area should be declared a totally excluded area, and that wherever the population is scattered you should have some very loose and only tentatively outlying provisions to deal with those scattered tribes. I find some difficulty in understanding what is the idea behind the distinction in the White Paper between totally and partially excluded areas since the partially excluded areas do not cover the scattered tribes. As I

understand it, the partially excluded areas are areas of compact tribal population almost as much as the one totally excluded area which the Secretary of State proposes?—(Sir *Samuel Hoare*.) These areas are already divided into categories; they are divided I think into three categories. We have reduced that division to two, and we have reduced it because in these areas where there are compact agglomerations of tribes there are existing differences of administration. With the few small exceptions that I have just mentioned, we are going on with the present arrangement, namely, that we keep as totally excluded the only one big area that is totally excluded now, namely, the Assam Hill tracts, and we go on with the partially excluded areas very much on the lines on which they are administered now.

13,442. Then the distinction really is a distinction of history rather than of reason or fact?—No; it is a distinction of history based upon a distinction of fact. My advisers tell me quite definitely that there is a difference in the tribal conditions and the general level of the population between these types of excluded areas.

13,443. But there is no difference in the extent to which the partially excluded tribal area is a compact and homogeneous area?—Compact, but in a different level of life.

13,444. You mean a more advanced state of civilisation?—I mean a more advanced state of civilisation.

13,445. The regime of the partially excluded area is so widely defined that you can have any degree of sterilisation, so to speak, of that area from the mere non-application there of certain revenue and land laws to the total exclusion of the area from the whole body of the Province?—Yes.

13,446. That is as far as law is concerned, and administratively the administration of a totally excluded area would probably be drawn from the Provincial service so that in fact you may have all degrees of administrative independence right up to total exclusion?—Yes.

13,447. And there may be very little difference between partial exclusion and total exclusion?—No, I would not say

that at all, from what I am told. There might be a great difference. There is already a great difference if you compare the administration in one of the big partially excluded areas, namely, Chota-Nagpore, with the big area in Assam.

13,448. I quite understand that there are differences. I am talking of the constitutional effect of the White Paper proposals. There is nothing to prevent a Governor by the exercise of his power making a partially excluded area practically wholly excluded and practically synonymous with a totally excluded area?—In legislation, it is perfectly true that it rests at his discretion as to whether the Provincial legislation should be applied or not. In the case of administration, there is this difference, that in the partially excluded area, the administration is provincial; in the excluded area it has its own administration.

13,449. Yes, but the degree of direction which the Governor has over a man drawn from the Provincial Civil Service and who is employed in a totally excluded area, would be very little different from which he would have over one under his own control in a partially excluded area?—You cannot generalise on a question of that kind. It must depend on the circumstances.

13,450. It was the degree of exclusion which was the point of my question. If you are going to confine total exclusion to one Frontier district, is it not the fact that what you are really doing is not to have two categories but to have one great category of partially excluded areas which may vary enormously in their degree of exclusion?—I do not know about "varying enormously," but they certainly vary.

Major *Attlee*.

13,451. I should like to ask the Secretary of State, first of all, with regard to the general idea of these excluded areas. Is it the intention of the Government that they should continue to be developed on their own lines, or is it the idea that they should be gradually absorbed in the general administration?—I should hope that they would be developed on their own lines.

13,452. With regard to finance, the evidence before the Statutory Commission (the evidence that Dr. Hutton also gave us upon that) was that there was a fear and an actuality sometimes that money would not be forthcoming?—Yes.

13,453. What power will the Governor have to see that adequate money is provided for these areas?—Money is non-votable. He can have what money he wants.

13,454. But take the partially excluded area. There the administration will be under the Ministers subject to the Governor's powers?—Yes.

13,455. Take the Education Minister?—Yes.

13,456. The allocation, I take it, of schools and so forth, is in his hands, is it not? The allocation of money for education in particular areas would be in the hands of the Minister, would it not?—Yes.

13,457. How would the Governor be able to ensure that adequate schools are put in the partially excluded areas?—He can put it into the budget.

13,458. He can insist on the Minister spending so much?—Yes.

13,459. Take, for instance, Bihar Province with the Chota-Nagpore area. Can he insist that a certain portion should be spent there?—Yes, he can insist.

13,460. The next question I wanted to ask you was with regard to these partially excluded areas. Is it the idea that the general organisation of the Province would be extended to these areas so that you would have Ministers operating in those areas, or would it be possible for the administration to be carried on on the lines of the aboriginal tribes assisted by the District Officer?—In the totally excluded area the answer is, of course, that it would go on as Major Attlee suggests. In the partially excluded area, we contemplate that it is the Provincial administration, and, to that extent, it is the Provincial Ministers who are responsible for the administration, always, as I said earlier, subject to the special provisions that the Governor may make.

13,461. The point was put to us that the more satisfactory way of running

these areas was that they should be run with a considerable degree of autonomy by the people themselves?—Yes.

13,462. With the advice of an experienced officer? If you have Ministers operating and the various services operating in the ordinary way, will it not be difficult to secure that?—Yes. At the same time, of course, it is also difficult to withdraw from these areas the kind of connection that they already have with the Provincial administration. This is no new proposal. It is really going on with what the state of affairs is now.

13,463. You said that your advisers had generally been against the exclusion, I think, of any area except the Assam area? The evidence we had from Dr. Hutton was that a large number of areas should be totally excluded, and that he regretted that some were now only partially excluded which he would have liked to see wholly excluded. His general line was the more exclusion the better?—Yes, and Dr. Hutton would not be satisfied with the present system in India. He would like to withdraw a number of these areas that are now connected with the provincial administration and to cut them away from the provincial administration. We have based our proposals really upon continuing the present practice.

13,464. Would not continuing the present practice defeat your intention of preserving the present practice, because, as far as you allow the introduction of the reform scheme of Ministers, and so forth, do not you eat into the native rule altogether and practically destroy it?—It depends on the Governor entirely how far that risk might take effect. Would Major Attlee address himself, not now, but when he thinks it over, to the other side of the problem, namely, the fact that, as Mr. Jayaker stated earlier, there are a number of Indians, administrators and public men, who do take a very great interest in these backward tracts. We had one of them giving evidence, Major Attlee will remember, at the Orissa Boundary discussions that we had a gentleman who obviously knew more about those particular tribes than almost anybody living. It is going a long way to cut a large,



number of these areas entirely adrift from the Provincial Administration. Gentlemen like the gentleman I have in mind would say that he would take perhaps a closer interests in the conditions in the tribal tracts than anybody.

13,465. Is not there a distinction between the administration and the legislature? Has any Indian Legislature shown much interest in the excluded areas and the backward areas in its Province?—I think so far as legislation goes these Proposals are perfectly safe; that legislation will only be applied to the Provinces—

13,466. I am not speaking of legislation, but the Legislature—the Members of the Legislature—Legislature as a whole. Has any Legislature shown any particular interest in the excluded areas within its Province?—I should like to hear the views of some of the Indian Delegates on a question of that kind.

Mr. N. M. Joshi.

13,467. On this point of Legislature, did any Government nominate any Member to represent the aboriginal classes in any Legislature?—I do not think if they did it would carry anybody very much further. I do not think one aboriginal in the Legislature would have much chance against the rest.

Mr. N. M. Joshi.] I am asking the question, did any Legislature take any interest in them? In these subordinate tribes of people who were interested were not in the Legislature at all, there would be nobody to move the Legislature.

Lord Eustace Percy.

13,468. Might I intervene to put one question. As regards legislation, is not the difference this that under the present Proposals with regard to partially excluded areas, the Legislature will tend to pass, say, general land legislation?—Yes.

13,469. The Governor will have to issue a special regulation saying that this shall not apply. Under a greater measure of exclusion the Legislature would be in a much safer position and the Governor in a position much less exposed to friction if no legislation passed by the Legislature applied to that area except when specially applied by the

Governor or by some special machinery?—(Sir Samuel Hoare.) But this is our proposal.

13,470. Surely it is not?—It is the proposal under paragraph 108.

13,471. No. "The Governor will also be empowered at his discretion to make regulations for the peace and good government of any area which is for the time being an excluded area or a partially excluded area, and will be competent, by any regulations so made to repeal or amend any Act of the Federal Legislature"?—Will you read the first paragraph?

Archbishop of Canterbury.

13,472. But, Secretary of State, that applies not at all to these special areas or special tribes with which we are dealing just now, but only to excluded or partially excluded areas?—Exactly, but that was the question asked me by Major Attlee and by Lord Eustace Percy.

Lord Eustace Percy.] I beg pardon; I have missed that.

Sir Abdur Rahim.

13,473. The excluded areas are a reserved subject, are they not?—Yes.

13,474. And all legislation has to be initiated by the people in charge of the reserved departments?—Proposal 108 deals with it.

Sir Abdur Rahim.] I mean under the present practice, under the Government of India Act; all legislation has to be initiated by Members in charge of the reserved departments.

Sir Hari Singh Gour.] No, I do not think so.

Sir Abdur Rahim.

13,475. I mean so far as the Government is concerned, not private legislation?—(Sir Malcolm Hailey.) There are very varying degrees applying as shown on pages 159 and 160 of the First Report of the Statutory Commission. There are very various degrees applying to the areas at present. For instance, Darjeeling and Lehaul are entirely under the reserved departments, the Governor in Council. In certain other tracts, the Ministers exercise authority, although under the rules of business absence that

authority has been limited. You must take each tract separately in that way.

13,476. Take Ranchi, for instance, that is under a reserved department?—That is under a reserved department. You must take each one separately to get at the facts.

Dr. *Shafa'at Ahmad Khan*.

13,477. In the Shan States, the Governor has direct charge of that area?—(Sir *Samuel Hoare*.) But the Shan States is Burma and the Shan States we have left outside any Burma proposals, as Dr. *Shafa'at Ahmad Khan* will remember.

Major *Attlee*.

13,478. One further question and that is with regard to finance. Have you considered the possibility of making some kind of grant from Central Revenues to Provinces which are burdened with a deficit, such as Bihar and Assam?—We have not only considered the necessity of a grant of that kind, but we are actually proposing it in the case of Assam. Assam is the only case in which we are making a proposal of that kind, and we are assuming a substantial grant to Assam for the backward tracts from the Federal Centre.

Major *Cadogan*.

13,479. They are all deficit areas, I suppose?—Yes.

Major *C. R. Attlee*.

13,480. Will those grants be tied up, so to speak, with administration; that is to say, will they be grants in aid of the backward areas, or are they just contributions to the general revenues of the Province?—I have not contemplated exactly what form they would take; whether it would be a part of the general grant for making up the deficit of Assam or whether it would be ear-marked for a specific purpose.

13,481. As I understand at present in the financial proposals there are deficit Provinces which, for one reason or another, are going to be given certain subventions. Is not Bengal, for instance, going to be given something in respect of jute?—Yes.

13,482. Similarly, would the grant, whatever it be made to Assam, or say,

there was one in Bihar or possibly for the new Province of Orissa, be definitely owing to the fact that they have backward areas for which they are responsible?—In the case of Assam, which, as I say, is the only case in which we make a proposal of this kind, the sum would be given in view of the fact that there was this heavy expenditure involved in the hill tracts. Whether an actual amount should be ear-marked or not for expenditure in those tracts seems to me to be an open question. Offhand, it does not seem to me to matter a great deal because the Governor there has the right to have what money he wants.

13,483. My point rather was as to whether, as a matter of fact, that grant in Assam, although put on those grounds, was because Assam could not carry on without it; whether there was not just as strong a case for making a grant to Bihar or, say, to Orissa if it has a considerable amount of backward areas attached to it, so that in effect the legislatures in so far as they have to spend money would not feel that they were having a burden attached to them by political accident without recompense from the general body of taxpayers in India?—We felt that we could not go further than to make this proposal for Assam, in view of the general state of Indian finances and we felt justified in making the proposal in the case of Assam, first of all, because the tracts are of great extent and involve a considerable sum of money, and, secondly, because Assam is a frontier district. A grant of that kind could be justified upon the ground of defence, just as a grant is needed from the Federal Centre to the North-West Frontier Province administration.

Sir *Hari Singh Gour*.] And Major *Attlee* will remember that the Bihar finance will benefit by the separation of Orissa.

Major *C. R. Attlee*.] Quite, but it will still be tied up with Chota Nagpur; that is all.

Lord *Snell*.

13,484. How far are the people concerned in the backward areas settled in a locality and how far are they nomadic—migratory?—The areas which

we are dealing with imply that they are settled in those areas.

13,485. The care of these peoples is to be under the Governor, but is that care to be protective as against physical and economical deterioration, as well as control in regard to law and order?—That is just one of our objects in giving the Governor these special powers. It is not only law and order that we have in mind. It is the whole field of government.

13,486. Then I cannot quite foresee how the Governor is to be kept aware of the possibly changing condition of these backward peoples?—He is kept aware of what is happening through the reports from the administration, whatever it is, in the areas.

13,487. And the officers concerned will be under an obligation to see that the Governor is aware of difficulties in a particular area?—I would rather put it in this way: The Governor is under an obligation to keep himself informed of these affairs and he will give whatever direction he wishes for that purpose to the officials, to keep him informed.

13,488. And there is no reason to presume that there is any danger that he will not be kept aware of them?—If he is carrying out his duties, no.

13,489. Then just one last question. I can see how the area is to be tied up to the Governor, but I cannot see how it is to be untied if the character and capacity of the population develop?—It would be untied by the procedure suggested in paragraph 106, namely, an Order in Council removing a particular area from the category of an excluded area into an ordinary field of Provincial administration.

13,490. On the advice of the Governor and through the Secretary of State?—Yes.

Lord Middleton.

13,491. May I interrupt for a moment in regard to what Lord Snell was asking about discovering anything in connection with these aboriginal tribes? I would like to reinforce what was put forward by Sir Reginald Craddock with regard to a plea for a special Service Officer. I have had experience of some of these aboriginal tribes and I do know that they form a very special study, and if

we are to rely in future upon finding out about them from the ordinary District Officers very little indeed will be found out. I can give a case in point. I stayed with them on several occasions in the Central Provinces and when I told my experiences to the District Officers they were surprised that I had obtained any contact with them, because they had never even seen them?—Lord Middleton surprises me with what he says. Some of the greatest experts upon these questions are District Officers. For instance, I think Dr. Hutton, who gave evidence yesterday before Sub-Committee D, is the best known expert upon these questions of anybody in India, and I think he is a District Officer.

Sir Hari Singh Gour.] Yes.

Lord Middleton.] I think he is rather the exception. Certain tribes exist, I think, in four districts of the Central Provinces which are so elusive that unless anybody knows them pretty well they never even see them.

Mr. F. S. Cocks.

13,492. Secretary of State, following upon Lord Lytton's question, will any provision be made for such an Officer?—I gave a number of answers earlier this morning upon that very point, and I do not think I have got anything to add to them.

13,493. I am sorry, but I did not remember exactly what you had said; regarding Proposal 106 you say that these areas will be embodied in a schedule. Will this Committee have an opportunity later on of discussing that schedule?—I said I was going to circulate a suggested schedule to the Committee. Whether they will discuss it or not is a matter for the Committee.

13,494. I understand that at the present time there are areas which, although not backward tracts in the constitutional sense, come under the Scheduled Districts Act where the executive has a power of reserving legislation. What is to happen to those?—That again is one of the questions that we were discussing at great length this morning, and I said to the Committee that I would take into account the point that had been raised and see whether some practical way could be found to deal with them.

13,495. Under Proposal 108 the Governor is empowered at his discretion to make regulations for the police and good government of any of these areas. I would just like to ask one or two questions to see how far that power extends. Would it extend, for instance, to the expulsion of undesirable residents?—Certainly.

13,496. Dr. Hutton said on page 11 of his evidence that in certain areas the ordinary police are not normally allowed to interfere in tribal cases. Will the Governor have power to continue that practice?—Certainly.

13,497. From page 25 of the same evidence I understand that lawyers are not allowed in these areas without the permission of the Deputy Commissioner. Will he have power to continue that practice?—Yes.

13,498. Would he have power to make regulations to prevent the alienation of land?—Yes.

13,499. And, lastly, would he have power to withdraw from the courts certain cases involving tribal customs?—Yes, by regulation.

13,500. In answer to Major Attlee you said that the Governor would have power to allot funds for the development of the backward tracts. Will that include power to allot funds for education?—Yes, for any purpose that is required.

Earl Winterton.] My Lord Chairman, I do not think there is any question that my ingenuity can possibly suggest that has not already been asked by some other Member of the Committee, so I do not propose to ask the Secretary of State anything.

Lord Hardinge of Penshurst.

13,501. I would like to ask the Secretary of State: Does he anticipate that the administration of the backward tracts will be to any extent different from what it is at present? I ask that because I think the administration of these backward tracts at the present moment is, as far as I know, and certainly was when I was in India, very good. I do not want to see it deteriorate?—I do not myself see any reason why, under this plan, it should deteriorate, or should be materially changed.

Earl of Lytton.

13,502. I would like to ask the Secretary of State one or two questions regarding the application of these passages to Bengal in particular. In Bengal at the present time there are two excluded areas, Darjeeling and the Chittagong Hill Tracts. I understand from answers already given by the Secretary of State that both of these areas would in future be regarded as partially excluded?—Yes.

13,503. With regard to Darjeeling district, I think that is obviously right, but I am not so well satisfied with regard to the Chittagong Hill Tracts. The Secretary of State has said that his object as far as possible is to carry on the existing system, but at the present moment the Chittagong Hill Tracts is a wholly excluded area, is not it?—Yes.

13,504. I would ask the Secretary of State whether, in fact, the conditions among the tribes of the Chittagong Hill Tracts do not approximate almost exactly to the condition of the tribes in the Assam Hill Tracts which it is proposed to make an excluded area?—We have been guided by the local Government in this matter. We have taken their advice. I do not know whether Sir Malcolm could add any details from his knowledge. (Sir Malcolm Hailey.) I am afraid I have very little knowledge of that particular area, if I might suggest this, that the particular question is one for discussion when the Committee sees the suggested schedule—as to whether one area should go into a particular class or not. (Sir Samuel Hoare.) It is a fact, as I say, that we have consulted the local government and this is their advice. After Lord Lytton has raised this question I will look into it again.

13,505. May I give you one or two examples of how this system would apply in the Chittagong Hill Tracts if it is only a partially excluded area? I understand that partially excluded areas are to come under the general administration of the Provincial Government?—Yes.

13,506. Presumably they are to have representation in the Provincial Legislature?—Yes.

13,507. Is it not really inconceivable that the Chittagong Hill Tracts, as they are to-day, should elect representatives

to the Bengal Provincial Council?—It would not, of course, follow that they would send representatives to the Bengal Council. That would depend upon the Governor's decision in a matter of that kind.

Mr. *Zafrulla Khan*.] The schedule does not provide for it.

Earl of *Lytton*.

13,508. Then there would be a difference between the position of a partially excluded area and the other parts of the Province in respect of representation?—It need not be so necessarily. It would depend upon the conditions of the Province. It is not necessarily a condition of a partially excluded area that it should be represented in the Provincial Council. It may be a feature of a partially excluded area, but it is not a necessary condition of it and it would rest with the Governor.

13,509. I understood that the only difference between a partially excluded area and the rest of the area of a Province was that in a partially excluded area the Governor was to have a special responsibility?—Yes.

13,510. But in the exercise of that special responsibility do you now suggest that he might omit that area from representation in the Legislature?—Yes; under Section 108 he has full powers.

13,511. If the Secretary of State is going to submit a schedule I can perhaps wait for further discussion of that schedule. I only raise it now because I should like to bring to the Secretary of State's notice the fact that when I was in Bengal and required special expert advice with regard to matters connected with the Chittagong Hill Tracts it was really only from the Assam District that I was able to find an officer who had had experience of tribes of that kind, and although there were officers in the Bengal Civil Service who had spent their time as District Officers in the Chittagong Hill Tracts, they had no experience of the tribal conditions. I came to the conclusion that the conditions of those tribes in those districts were really exactly the same as the conditions of the tribes in the Assam hill districts?—I will certainly put Lord Lytton's criticisms and suggestions to the Governor of

Bengal and later on we can discuss it again.

13,512. It is quite a different problem from that of the Darjeeling district?—I see that, yes.

13,513. Which is, it is true, a hill people who differ very much from the people of Bengal, but the actual administration of the Chittagong Hill Tracts is quite peculiar. They have still a number of chiefs who have certain powers and are recognized as, in some respects, the headmen of the districts—a feature which is not common to any other part of Bengal, and it is not found amongst the Hill people in the Darjeeling District at all. Therefore, I thought it was desirable merely to mention the fact that the case for the inclusion of the Chittagong Hill Tracts as an excluded area seems to me to be worth consideration?—Certainly.

Earl *Peel*.

13,514. I would just like to ask about these officers. Of course, it is understood that rather specially qualified officers are required to deal with the tribes in a backward tract? What I am not quite clear of is what is the range from which the provincial government can draw these officers? You may remember that in the Statutory Commission it was suggested that these tracts should be under a central authority because they would have power over the All-India services. Would the local government or the Governor, in order to get these special officers, be able to draw from officers in other Provinces, or would he have to depend entirely upon those who were specially trained in his own Province for this special work?—The Secretary of State's services, of course, would be available everywhere. In actual practice my advice all goes to show that it is upon local knowledge that the provincial Governor chiefly draws, and it probably is from people in his own Province.

13,515. Then they would tend rather to be the same people who were employed. If he wants to draw upon the services elsewhere, he communicates with the Governor-General?—Yes.

13,516. For the kind of man he wants?—Yes. It will not be a distinct service, those services for the excluded areas;

they will be served by the available personnel in the other services. Our own view is definitely against a small separate service. There is every kind of administrative objection to it, and I think a small service like that would be far less efficient than the present arrangement, in which we are able to draw upon the Secretary of State's services and the other services.

13,517. I suppose they would specialise after a time no doubt in this particular class of work?—I think they will go on as they are now. Most of these people are specialists.

*Archbishop of Canterbury.*

13,518. I have no right to ask him personally because he is not giving evidence, but it would help us upon that matter if Lord Lytton could tell us how he got the officer from Assam. I suppose he must have been an All-India officer and he was administering the Province under the present system. I would like to ask that question through the Secretary of State?—I can answer His Grace's question in a more general way. The Governor could ask for the loan of an official from another Province.

*Earl of Lytton.]* As the Secretary of State has said, I got him by reference to the Government of Assam.

*Earl Peel.*

13,519. I was not sure whether that transfer between Provinces would be quite as easy in the future as it is now by reference to the control of the Governor-General over the All-India service. That was the point of my question?—I do not think there ought to be any difference. We are dealing after all with a very small number of officials.

*Sir Austen Chamberlain.*

13,520. Secretary of State, I want to revert for a moment to the case of aboriginals scattered through the Provinces and not located either in a totally excluded or partially excluded area?—Yes.

13,521. If I rightly followed what was said by some other Members of the Committee earlier, I think that some of us feel that we have a rather special responsibility for these people?—Yes.

13,522. And our anxiety is not so much lest the Provincial Government should deliberately refuse them justice as that it should be unaware of their conditions and, therefore, not provide the necessary remedy. Do you think it would be possible to stipulate that the Provincial Government should appoint an officer whose business it would be to inspect and report upon these people? That would bring to light their conditions and needs. We might then more confidently entrust their fate to the Provincial Government?—I agree with Sir Austen's suggestion that the officer should preferably be an officer of the Provincial Government. I think there is great advantage in making him an officer of the Provincial Government. I think he would have more influence on that account. As to whether you should specify in the Constitution Act that an officer of this kind should be presumably appointed everywhere, I am not sure that I could go as far as that. I can imagine that there are certain provinces in which there really would not be work for a man of that kind. I do not know what Sir Malcolm would say. (*Sir Malcolm Hailey.*) We have practically no or very few aboriginals in the United Provinces; they are practically confined to one district. In the Punjab they have, it might be said, really none at all. They have their two backward areas of Lahaul and Spiti which are so cut off that there is little power of intervention with them. In Bihar and Orissa they have quite a number of districts in which aboriginals actually preponderate—three—and they are represented very largely in six other districts, and it might be found quite advisable to have some special officer capable of advising the local government in regard to the aboriginals and people of that class where they are largely represented such as Bihar and Orissa, but I am doubtful in my own mind whether a permanent officer of that kind is required, or whether an officer could not perfectly well be appointed to make reports to the local government from time to time. I think it would have to vary therefore in each province—the provision you made on that account. (*Sir Samuel Hoare.*) If I may complete my answer, as I said earlier this morning, I will look into this point again. I put the difficulties on both sides to the Committee.

Marquess of *Salisbury*.

13,523. It might form a special place in the Governor's instructions?—That is one feature of the question into which I was going to look.

*Sir Austen Chamberlain*.

13,524. I think I am right in understanding you or Sir Malcolm, or one of the Delegates, previously said that such an officer had been appointed in some cases by the Provincial Government already?—Yes, there is an officer for the depressed classes in the Government of Bombay.

Dr. B. R. Ambedkar.] The backward classes. There was also one in Madras.

*Sir Austen Chamberlain*.

13,525. So the proposal is merely making compulsory on all Provincial Governments where the case arises a provision which the more advanced Provincial Governments have already made?—They have made the provision because the conditions were such as to give work to an officer of that kind. As Sir Malcolm has just said, there are provinces in which there would not be justification for an appointment of that kind.

13,526. There may not be need for a whole time appointment, but what I beg the Secretary of State to consider is whether there is not need for some provision which ensures that the condition of these people shall be examined and reported upon so that an informed public opinion may be brought to bear upon the Legislature?—I will certainly look into all these points.

*Sir Hubert Carr*.

13,527. May I ask a question with regard to proposals 106 to 109 as to their scope. This morning, we have been discussing their application to backward areas on account of the backward condition of the people. Is it intended that they can be applied if necessary to certain areas; for instance, could they be applied if it were found necessary to a district like Midnapore, because conditions connected with terrorism and crime were such that it was not advisable for the constitution to be allowed to work in its ordinary application?—No; these

provisions deal exclusively with backward areas, and they are not intended to go further than that.

*Mr. M. R. Jayaker*.

13,528. It is not a weapon in the Government's hands to punish politically troublesome areas?—These provisions are not intended for that purpose. If it were found necessary to make provisions of that kind, they would have to find another place in the White Paper or in the Statute.

*Sir Hubert Carr*.

13,529. It is not a weapon in the Government's hands to protect well-disposed people in certain areas?—No; these provisions are simply a chapter to deal with one part of the problem. If it were found necessary to deal with another part of the problem, the place would not be here.

*Dr. B. R. Ambedkar*.

13,530. I want to ask you one or two questions to clear up the financial side of this problem. I want to ask a question, first of all, with regard to financing what are called the partially excluded areas?—Yes.

13,531. I take it that there would be a common budget, the provincial budget, in which the moneys provided for the partially excluded area would also be included?—Yes.

13,532. In that case, the whole budget, of course, would be open to discussion by the Legislature?—Yes, subject to paragraph 109.

13,533. I am coming to that. It is only when the Governor exercises his special responsibility under paragraph 70 that they would go outside the purview of the Legislature? Is not that so?—Yes, and paragraph 109.

13,534. But ordinarily they would be part of the provincial budget?—Yes.

13,535. I want to ask a similar question with regard to the wholly excluded areas. I find that the special responsibility of the Governor under paragraph 70 (f), is confined to partially excluded areas only?—Yes.

13,536. That means that for the administration of the wholly excluded areas

the Governor could not draw upon the provincial funds?—Dr. Ambedkar's very acute mind has discovered a gap in the White Paper. That is so.

13,537. He could not draw upon them?—As drafted he could not draw upon the provincial funds. It is an omission that we propose to set right in any final draft.

13,538. Another paragraph is 49 to which I also want to draw your attention in this connection. There subclause (v) says that the expenditure required for excluded areas shall be the special responsibility of the Governor-General?—Yes.

13,539. Do I take it that in the administration of the wholly excluded area the Governor, who presumably would be the agent of the Governor-General, would have to depend upon such moneys as may be supplied to him by the Governor-General in the exercise of his special responsibility?—No; the Governor himself will ask for the money from the province.

13,540. So you do propose to amend the provision dealing with the special responsibilities of the Governor to enable him to draw upon provincial funds for the administration of the wholly excluded areas also?—Yes.

Mr. M. R. Jayaker.] Does it not now fall under paragraph 96, subparagraph (b): "The Governor will cause a statement of the estimated revenues", etc., and then you have given power "to specify separately those additional proposals (if any), whether under the votable or non-votable heads, which the Governor regards as necessary for the fulfilment of any of his 'special responsibilities.'" Special responsibilities include expenditure to be spent on the partially excluded areas.

Dr. B. R. Ambedkar.

13,541. I am talking about wholly excluded areas?—The point Dr. Ambedkar has raised deals with totally excluded areas and, by an error in drafting (it is nothing more than that) it would appear that the Provincial Governor, while he could draw upon the provincial funds for partially excluded areas, could not draw upon the pro-

vincial funds for the totally excluded areas. That is an omission in drafting.

Mr. N. M. Joshi.

13,542. Might I ask a general question about the merit or demerit of the method which you have proposed of protecting the backward people and the method of protecting their interests by treating them as a minority. I want to ask you what is the difference between the two methods—the method of protecting by giving the Governor special power to protect a minority and the method which you have adopted to protect the backward people?—We feel in the case of the backward people that they do need some further and more definite protection. That is the reason why we have got these provisions 106 to 109. We feel that they are so far away from the ordinary political conditions in India that they really are in a different category, say, to Members of the great religious communities of India.

13,543. I want to suggest to you, Secretary of State, that there are two kinds of protection. The first is from the politicians, as you say?—Yes.

13,544. The second protection is from an autocrat?—Yes.

13,545. I am not using that word in an offensive sense. In the case of the method which you have followed in the case of minorities, there is protection both ways; the minority is protected from the majority of the politicians by giving the Governor special powers and the minority also is protected against an autocratic use of power by any officer or by the Governors because the Legislature can deal with the questions of the minorities. In the method which you have followed, there is no protection against the autocratic use of the powers given to the officers who may be appointed to those districts. I, therefore, want to know from you whether you do not think that that method followed in the case of the minorities gives protection both ways and therefore should be adopted in the case of these tribes also?—We do feel very definitely that we have to take into account experience. All experience goes to show that these areas have on the whole been sympathetically administered. It also goes to show that



it is very dangerous to make sudden changes in them. Judged, therefore, by the past it looks as if the aborigines themselves will be both happier and safer if the same kind of arrangement still continues. I hope I have said enough this morning to show that I do regard these backward areas as a very definite exception in the Indian picture, and as an exception that must be dealt with by exceptional methods. We think, judged by our experience, that this is the best way of dealing with them, and as soon as you bring in the ordinary checks of Parliament and politics, which may be very valuable and applicable in many other directions, it really is going to do harm in the long run to the tribes themselves.

13,546. I am not making any allegations against any officer, Secretary of State?—No; I know you are not.

13,547. And I am prepared to admit with you that on the whole the officers are sympathetic but, at the same time, Dr. Hutton himself in his Memorandum has given instances of cases where there was a danger of the interests of these people being sacrificed. He mentions this one in his Memorandum: "Another

instance of the harm that can be done by an inexperienced officer and of the care that has to be taken in administering these areas may be taken from Assam, where a range of hills owned by the independent Najas was regarded as important on account of the presence of suppositious oil or coal." Where big interests are concerned, the interests of the backward tribes may sometimes be sacrificed. He gives another instance?—But, Mr. Joshi, however, good those instances may be, I still fail to see how political intervention would have been likely to make things better. I think it might very well have made things worse.

13,548. I will tell you how?—Dr. Hutton, so I am informed—unfortunately I could not be at the Meeting—did not at all draw the conclusion which Mr. Joshi has just drawn from it. The conclusion he drew was to exclude these areas altogether.

Mr. N. M. Joshi.] It is true Dr. Hutton believes in autocracy and, therefore, he wants exclusion.

Chairman.] Mr. Joshi, I propose to adjourn now until half past two o'clock.

18th October 1933.

PRESENT :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.

Lord Hutchison of Montrose.  
Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Sir Joseph Nall.  
Miss Pickford.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FYNDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

Mr. N. M. Joshi.

13,692. Secretary of State, yesterday, you stated in reply to my question that you want to give the aboriginal tribes further and more definite protection. I am not asking you questions in order that the protection shall be whittled down, but my anxiety is that there should be more protection than you are giving. In connection with that, I want to ask you a question as regards paragraph 109?—(Sir Samuel Hoare.) Yes.

13,693. In that paragraph, you are allowing the Governor at his discretion to disallow any resolutions or questions dealing with the administration of a partially excluded area. I want to ask you whether this provision will not reduce the protection instead of increasing the protection?—No. I do not take that view. I take the view that unless there is a safeguard of this kind debates and resolutions may arise in a Provincial Chamber that would stir up a great deal of trouble, or that might stir up a great deal of trouble, and that might do a great deal of harm in a backward area.

13,694. But did not the Legislature contemplate this as one of the means by which injustices done by people would be redressed, and from that point of view, when you are establishing an autocratic institution in the districts, does it not reduce the protection when no questions could be asked and no resolution could be discussed regarding the actions of the Executive?—In the partially excluded areas, Mr. Joshi—will remember that it is not an autocratic administration. It is the ordinary Provincial administration acting, however, with certain safeguards imposed upon it by the Governor.

13,695. Yes, but the Governor will have the power either to apply or not to apply the particular piece of legislation?—Yes. I regard that as a very necessary safeguard.

13,696. It is a necessary safeguard but at the same time when the Executive is not responsible to the Legislature, when you prevent questions being asked as regards the actions of the Executive and prevent resolutions being discussed as regards the actions of the Executive, you are reducing protection?—No, I do not think so. I am afraid, Mr. Joshi and I do not agree. I base my view upon the very strong advice of the experts who have actually been dealing with these people in these backward tracts. They think that some safeguard of this kind is essential, otherwise you may get resolutions moved and discussions taking place that would stir up all kinds of trouble in these very exceptional districts.

13,697. As regards the excluded areas, you prohibit discussion altogether. As regards these areas, I want to know whether the protection is not reduced by making the provision that there shall be no discussion?—I did not quite hear the last part of your question.

13,698. As regards the excluded areas, there can be no discussion even with the permission of the Governor or of the Governor-General?—Yes; that is so. We are dealing with a very exceptional case in our Proposals—only one single case—and both upon the grounds of merit and also upon the grounds of practicability we think this is the best proposal. As to the grounds of practicability, there is this fact that the Governor would have

no official minister who could answer interpolations of this kind about a totally excluded area. In the case of the partially excluded areas, of course, he has the Provincial administrators and the Provincial administration, but in the case of the totally excluded areas he would have no representative in the Chamber to deal with questions of this kind.

13,699. As regards the protection of these people, the need for the protection of these people, as I have stated in my questions so far, is against the autocratic actions of the Executive or the arbitrary actions of the autocratic Executive and secondly they also need protection against these people being exploited by others. There was a mention of the moneylenders exploiting them; there is also a possibility of the capitalist and the employers exploiting them. My question to you is this, that if you prohibit discussions and questions as regards the treatment given by employers to their employees, who in some industries are people belonging to the aboriginal tribes, you reduce the protection instead of increasing that protection?—I would prefer really, as I say, in these very exceptional cases, to rely upon the people on the spot. I think they are much more likely to be sympathetic than politicians, however excellent those politicians may be, outside.

13,700. Secretary of State, I should draw your attention to a few quotations from the Report of the Royal Commission on Indian Labour. The Royal Commission on page 115 says: "The main coal-fields lie in or adjacent to areas chiefly inhabited by aboriginal tribes. From these tribes the labour force was first drawn and they still supply the bulk of the workers." So, in the coalmining industry the large, proportion of the workers comes from the aboriginal tribes?—What particular areas is Mr. Joshi dealing with?

*Sir Hari Singh Gour.*

13,701. The Jharia Coalfields?—Where?

*Mr. N. M. Joshi.*

13,702. Some are in Bihar, some are in the Central Provinces, but mainly in

Bihar and Bengal?—If so, of course; Mr. Joshi's question does not really apply. Those areas are partially excluded areas, not totally excluded areas. All discussion would not be invariably barred.

13,703. I am dealing with your prohibition to ask questions and prohibition of discussions?—There is not a prohibition in areas of that kind.

13,704. Some of these areas will be partially excluded areas?—Yes, and in the case of partially excluded areas all that is necessary is to get the permission of the Governor.

*Sir Hari Singh Gour.*

13,705. It is the other way about; it is not a question of getting the permission of the Governor. He could stop it?—I beg your pardon; yes, that is so.

*Mr. N. M. Joshi.*

13,706. The fact is that the protection you are proposing is less because the permission of the Governor must be obtained?—He can stop the discussion if he thinks the discussion is harmful.

13,707. That is exactly what I am suggesting to you: that, instead of increasing the protection, you are reducing the protection. Now as regards the other area of Assam, from the Report of the Royal Commission on the Tea Estates I shall read one or two small quotations. On page 357 of that Report the Royal Commission say: "About 126,000 labourers are employed, most of whom are aboriginals from Chota-Nagpur and the Santal Parganas in the province of Bihar and Orissa." That is one part of the tea estates. On page 359 the Royal Commission say: "At present the most important recruiting area for both valleys is Chota Nagpur and the Santal Parganas, whose aboriginal population is preferred for work on the tea gardens." Here you will notice that these aboriginal people are preferred by the employers because they are unable to protect themselves. Now in the case of such people is it not better on the whole that there should be greater protection than less protection?—Here again I should like to look into the details. I should be surprised if these Tea Estates were in the totally excluded area of Assam. If

they are not in the area of total exclusion, then it does not seem to me that the question has any bearing upon the point.

13,708. Now as regards the danger of land being alienated, as there is a danger of land being taken by money-lenders, there is also a danger of land being taken by big capitalists like the tea planters and the mining people. Is it not possible for you, instead of leaving it to the Governor and the District Officer, to put down in the Constitution itself or in some way provide that land belonging to the aboriginal people should not be taken away at all, because if you leave the protection to the Governors it is quite possible that the protection may not be good enough against big capitalists?—All I can say is that we have consulted the men who have been actually dealing with this problem on the spot and they support this kind of protection. I should like to see every kind of practicable proposal carried into effect for preventing these backward people being exploited. I am not sure, however, whether you could in actual practice carry into effect a very general proposal such as Mr. Joshi has just suggested.

13,709. I shall put before you for your consideration one or two proposals. My first proposal is that you should leave the Legislatures free to ask questions and to have discussions. That is one proposal. Then my second proposal is that you should give these aboriginal tribes not only representation according to their population but weightage in the representation. You have given weightage in representation to minorities which are much more powerful than the aboriginal tribes, while in the case of the aboriginal tribes you have not given representation even according to the population basis?—No; and it is just because of that, Mr. Joshi, that we are proposing, as an alternative, this other method of dealing with them. The reason is that we feel that they are so distinct from the other population of India that we must give them special treatment. We feel that these very backward people really cannot gain anything at all by a small representation in a Legislature about which they might understand nothing at all.

13,710. In the first place, I do not know why that representation should be small?—Call it big. I do not mind whether you call it small or big. I would say that any representation of these very backward people would be of very little use to them.

13,711. May I ask whether these backward people will not be subject, either to Provincial or Federal taxation?—In the totally excluded areas the administration will be the Governor's administration.

13,712. But they will not be free from either the taxation of the Federal Government or the Provincial Government. How can they be free from customs taxation?—That is the position now. But does Mr. Joshi suggest really that head hunters living in the hill tracts of Assam could take an intelligent part in a Budget discussion about indirect taxation?

13,713. Secretary of State, you may consider that they are head hunters. I know some of these aboriginal tribes and I know they are not head hunters. They can be well educated and they can be very well civilized, and I am quite sure that if you give them representation they will be able to find representatives. You are not excluding from the Federal Legislature only the head hunters of Assam; you are excluding all aboriginal tribes?—No, that is not the position. In the totally excluded areas it is so. In the partially excluded areas it rests with the Governor how far representation and all that goes with it is applicable.

13,714. No, in the Federal Legislature you have not provided any representation for the aboriginal tribes?—I beg your pardon; that is so; because we felt that no representation that we could give to these areas would really be effective. All that would happen would be to draw them into a political machine that might very well crush them.

13,715. I do not know how any Legislature can crush them when the Governor has special powers to protect them. Any representative of the aboriginal tribes will certainly express himself as regards how the taxation affects his community?—I wonder very much how in actual practice you could find one, two, three,

or four people to represent in a Federal Legislature all these very different tribes and communities, and even if they could represent them, whether they would make their voice effectively heard.

13,716. The same thing used to be said about what are called the Untouchables some time ago: that they would not be able to provide any representatives. If you put down in the Constitution no representation at all for the aboriginal tribes the same condition will continue, but if you give them representation it is quite possible that as in the case of the Untouchables we do not feel any difficulty now, in the case of the aboriginal tribes there will be no difficulty as regards their representation?—Of course it is very difficult to say what it is they require and what it is they do not require themselves, but all our information goes to show that they do not require this kind of representation, and I think Dr. Hutton himself made the point in his Memorandum and the evidence he gave the other day.

13,717. May I suggest to you that these aboriginal tribes require protection against the autocratic officers, against moneylenders, and against capitalists? They also require protection from anthropologists who want these specimens to be preserved?—And they also require safeguards from ignorant politicians.

13,718. That you are providing against—you are providing against the ignorant politicians. May I ask you another question? Yesterday Mr. Seymour Cocks asked you a question about the power of deportation and you said that the District Officers will possess the power of deporting. May I ask in what form this power of the deportation will be expressed? Will it be expressed so that the District Officers will be able to deport the moneylenders and people who exploit, or will it be a general power of deporting anybody?—It will be a general power of the Governor to make regulations for this and for other purposes connected with his special responsibility to the excluded area.

13,719. Might I draw your attention to the fact as stated in the quotation which I gave you from the Report of the Royal Commission, that many of the industries are situated near the aboriginal

areas, and if in those areas there are some strikes by workers there is a great likelihood of people who take part in those strikes being deported. What is the protection against such action?—The protection is really the commonsense and the good faith of the Governor not to abuse his power. We have no ulterior motive in our minds to use these powers as strike-breaking powers.

13,720. I am not suggesting that there are any ulterior motives in your mind, but I want to know whether there is any protection against the wrong use of autocratic powers which generally exist when Legislatures cannot discuss matters?—I would not say that is the only check upon the misuse of powers. There is the check of Parliament, there is the check of Whitehall, and certainly there are other checks. There is the check of public opinion in the gross misuse of powers.

13,721. How would public opinion be expressed if the Legislatures cannot discuss matters?—There is such a thing as the Press.

*Dr. B. R. Ambedkar.*

13,722. Might I ask just one question arising out of the questions put by Mr. Joshi. I just want to draw the attention of the Secretary of State to a difficulty which I feel. Under paragraph 100 as drafted the distinction made between the Excluded Area and the Partially Excluded Area is on the basis that in the Partially Excluded Area discussion is possible or the Governor has the power to disallow it, while in the case of an Excluded Area the Governor is prohibited from allowing any discussion. My difficulty is this: Yesterday, I think in answer to a question by Major Atlee, you stated, Secretary of State, that the contribution which the Centre was bound to make to Assam in order to cover the deficit arising out of the Excluded Area there was not to be an ear-marked amount but was to be part of the general revenues of the Province of Assam. I suppose I am correct in saying that that was what you stated?—I think I left the question somewhat open as to whether it should be a specific grant or whether it should be merged in the general grant.

13,723. The impression that I formed was that you said you did not think that it would be an ear-marked amount?—No. I think what I said, or anyhow what I intended to say, was that in the figures that we had been discussing we had assumed that it would be part of the general fund, but as to whether that was the best way of dealing with it I had an open mind.

13,724. Very well. I will take another aspect of the thing. In answer to a question which I put you stated that so far as the financing of the Excluded Area was concerned you were going to rectify the omission in the White Paper and allow the Governor of the Province to draw upon the general fund of the Province of Assam for the expenditure that he was likely to incur under the Excluded Area?—Yes.

13,725. The difficulty that I feel is this, that if the Governor is to have the power to draw money from the Provincial Fund of Assam in order to carry on that administration in the Excluded Area, is it consistent with this provision in paragraph 109 that the Legislature should be altogether prohibited from discussing the affairs of the Excluded Area which is supposed to provide that money?—I think Dr. Ambedkar does raise a difficult case. It is not a case in which a very large sum is involved, for this reason, that by far the greater part of the expenditure upon the Totally Excluded Area of Assam will be found from Federal funds, but I think it may be assumed that there will be a sum in addition to that needed.

13,726. As you said yesterday, in all these areas where there will be Partially Excluded Areas the Budget would be a common Budget, unless, of course, the Governor certified an extra amount under his extra responsibility, in which case the Budget as a whole would be placed before the Legislature and open to discussion. I do not see how the difficulty would be got over?—We had considered the advantage in a case of that kind of proceeding, say, by a contract budget over a period of years. What I am anxious to avoid are frequent discussions.

13,727. I suppose the purpose could be best served by having a common provision for both, prohibiting discussion

and allowing the Governor the power to prohibit it or disallow it, whichever he thought necessary?—It was pressed upon us very strongly by the people working in these tracts that there was a great advantage in excluding discussions in the case of the Totally Excluded Areas, but I have always seen the difficulty of the expenditure in Assam from provincial funds. I think the Committee and the Delegates might consider whether supposing there was a contract budget for a period of years, when the contract was renewed there might then be a discussion; but even that (I say it so that the Committee should know the whole position) is contrary to the views of a good many of the experts.

13,728. But I suppose the purpose of the experts and the purpose that you have in view would be very well served by having this power of the Governor to allow a resolution and discussion?—What we wanted to avoid was the Governor constantly having to refuse discussions of this kind. It would put him into a difficult position, and we do not contemplate in the case of Totally Excluded Areas that there would be discussions, and we do not want to take any action that would appear to permit discussions that we think would be harmful to the area; that is what it comes to.

Dr. B. R. Ambedkar.] I was only suggesting that the Governor's power would be adequate protection against that. That is all I ask.

Lieut.-Colonel Sir H. Gidney.

13,729. My Lord Chairman, I have two questions only that I desire to ask the Secretary of State. The first question possibly may not arise or be in order, and the Secretary of State will correct me. In the interpretation of the Partially Excluded or Excluded Areas, so far as the exclusion is concerned, there are other Excluded Areas of India from legislation, such as the Ceded Areas. They do not come into this at all, do they?—They do not come into this at all.

13,730. The next question I want to ask you, Secretary of State, is this: Have you considered what legislation or how legislation is going to be applied to these areas, considering the fact that

that they are denied any political voice?—I think Sir Henry Gidney has one or two cases in mind that occur to some of us, but it really does not come into this chapter at all.

13,731. You promised me that you would make inquiries, and I know you are making inquiries. I hope the inquiries will result in those areas being given a voice in the Legislature of the country. They are to-day precluded from any legislative views?—I think if Sir Henry would raise a question of that kind at some period in the discussions, I would then deal with it.

13,732. Very well. The second point is regarding the excluded and partially excluded areas. I do not talk as an expert in the matter, but I have spent nearly seven years of my service in those areas, and I am prepared to state that in the totally excluded areas from my experience they are really not intellectually capable of expressing any views on a political matter, and they are not concerned in expressing any views on such matters. In those areas, as Mr. Joshi has stressed (and Dr. Ambedkar has pointed out ambiguity which might be got over), might I suggest that use might be made of that very noble army of Britishers, the missionaries, I mean, who have established themselves in these areas, and who really know more about these areas than any district officer; that they might be given the option of representing them?—Of course, we can consider a point of that kind, but I still think myself, subject to our further consideration, that it is really better frankly to accept the fact that these are exceptional areas, and they are not susceptible to the kind of treatment that the rest of India is susceptible to, and to give them a representation, even although the representatives might be excellent people like the missionaries, would really be a somewhat incongruous affair, and it might not help them as much as our proposals help them in frankly treating them as an exceptional area.

Lieut.-Colonel Sir H. Gidney.] I will tell you why I stress the point. In my years of service in the areas, I served in the Garo Hills, the Naga Hills and the Khasia and Jaintia Hills, and I was in the head hunting expedition of

1913 when I almost lost my own head. As a doctor, I have toured the foot of the Bhutan and Nepal Hills, and in all these areas I did find occasions when the villagers as a body opposed orders issued to them by their Ghambaras (Ghambaras being a synonymous name for Patels or lambhdars in the villages in other Provinces), and it was in those areas where I met life and death as a surgeon that I got into close touch with these aboriginal tribes as well as with that great army of splendid men, the missionaries, and I was particularly struck with the great confidence and the great trust that these aboriginals in the villages placed in these missionaries, and I thought that if any representation were to be given to them, this might be a means by which we could give it.

Archbishop of Canterbury.

13,733. Before you leave that, Sir Henry, may I ask whether it is not the case (I think it is) that in some cases already in the legislature, such persons as those to whom Sir Henry has alluded have represented these special tribes?—Yes, there is a case in Assam, but I think the case is the case of the representation of an area that would not be totally excluded, but partially excluded. I will look it up.

Mr. Butler.] It is referred to on page 161 of Volume I of the Report of the Statutory Commission. A Welsh missionary represented the area.

Lieut.-Colonel Sir H. Gidney.

13,734. Carrying the matter a little further and giving my attention to the partially excluded areas with which I have been very familiar, I do think there is a growing sense of responsibility among these people, and I do think that education, although of a primary nature, has spread very largely owing to the work of the missionaries, and the hospitals there, and I think myself that these partially excluded areas could with equal benefit, as has already been allowed to the depressed classes, be given something in the shape of some representation in the legislatures of these partially excluded areas?—Yes; we do provide representation in the provincial legislatures for these districts.

13,735. I think that is quite enough, myself?—Yes. I am reminded that there is actually a provision for 21 seats in the various provincial legislatures.

Lieut.-Colonel Sir *H. Gidney*.] Thank you. I have no more questions.

Mr. *M. R. Jayaker*.

13,736. Secretary of State, the whole assumption of this chapter is this, that the Governor, who will be a public man from England and the official on the spot, will be able to give these uncivilised people greater protection than public opinion through the legislature?—That is the assumption. Assuming that there is no racial distinction between Indian and European administrators.

13,737. I am not making any?—No.

13,738. Is it wise not to rely upon the sense of the modern Indian as regards his obligation to bring up these communities? Is it wise to ignore that sense altogether? I quite see your difficulty that they should not be submitted to legislation for which they are not ripe. I agree up to a certain point, but do you think you are right in taking these poor people entirely out of the influence of the legislature and public criticism to the extent of not even allowing questions under paragraph 109?—It is only questions in the one area totally excluded.

13,739. I am speaking of that area. My fear is that you may, in course of time, stagnate public criticism, and it will not be able to approach those people, and they will continue to remain for a long time as exhibits of what civilisation used to be at one time in India. The only safeguard is to allow the light of public criticism to bear upon these people?—My difficulty is that they are so remote from the general standard of civilisation in India that, in actual practice, bringing to bear upon them the light of public opinion is really going to stir up a great amount of trouble, and very likely do them an injustice?

13,740. That is so. Then the proper protection is that which you have provided in paragraph 108, that legislation which will normally apply in other parts of the Province will not apply unless the Governor thinks fit, but stop there. Why remove them even from the category of

asking questions as you have done in paragraph 109? You have gone even to this length, that the Governor cannot make rules, that subject to his sanction, questions may be asked and discussion take place. That is a very drastic proposal, if I may say so?—We have felt that we must go very cautiously in dealing with these aboriginals, and it is in the interests of caution and their own peace and security that we make what I admit is a drastic proposal, but it is a proposal a good deal less drastic than the proposal made by Dr. Hutton in his evidence, namely, that all discussion should be barred, not only in the totally excluded areas but in the partially excluded areas as well.

13,741. Dr. Hutton is an expert, and I am always extremely careful about accepting experts at their words, because all experts up to a certain point are blind men. Their value lies in being able to see one point. But may I point out that what you are proposing in paragraph 109 is more drastic than what you are proposing in paragraph 52. In paragraph 52 you have given power to the Governor-General in sub-clause (b) on page 51: "prohibiting, save with the prior consent of the Governor-General at his discretion, the discussion of or the asking of questions on" then: "matters connected with any Indian State other than matters accepted by the ruler of the State in his Instrument of Accession as being Federal subjects; or (ii) any action of the Governor-General taken in his discretion in his relationship with a Governor; or (iii) any matter affecting relations between His Majesty or the Governor-General and any foreign Prince or State." Even these questions can be discussed with the approval and sanction of the Governor-General, but if your paragraph 109 is to be followed, this is the one subject where the Governor has no power to allow questions or discussion?—Yes.

13,742. It is certainly a more drastic proposal than the case of a foreign Prince or State which can only be discussed with the approval of the Governor-General, but in the legislature we cannot ask any question or discuss any matter relating to the totally excluded areas. That means that they get a much higher



status than a foreign Prince does, so far as the asking of questions is concerned ?—I think on the whole they deserve a higher status, because they are less able to defend themselves.

*Archbishop of Canterbury.*

13,743. May I, arising from that, return to what I ventured on a previous occasion to urge, that this paragraph 109 is needlessly drastic. I suppose the object of legislatures such as these is to educate people in problems vitally affecting the affairs of their country. It must be of great importance to legislatures to understand and know what is going on with the very interesting and responsible problem of these aboriginal tribes. It seems to me most natural that sometimes a question should be asked about them so long as the discretion is given to the Governor that if he thinks it is a highly inappropriate question, or would be likely to prejudice these excluded areas, he should prohibit it, but paragraph 109 does not even allow the Governor to permit a question. I merely ask whether (it is really in view of the importance of the problem, and, therefore, the importance of the Indian legislature having opportunities of knowing about it) so long as you safeguard the right of the Governor to object and prohibit, you should not insist that he can under no circumstances permit even a question ?—It is not a question, His Grace will see, of excluded areas. In our proposal it is a case of only one excluded area, namely, Assam. In the case of partially excluded areas discussion is permissible.

13,744. Yes ?—We are dealing really with one very exceptional case, and in that very exceptional case, I feel some hesitation in ignoring the very strong representations of the officials who have actually been dealing with problems of this kind. It is not that I am not conscious of the strength of the argument on the other side ; I am ; but I am very nervous of taking an unwise step that is really going to stir up trouble in what are really almost totally uncivilised areas—some of these areas.

*Mr. Zafrulla Khan.*

13,745. An anomaly of this is that their nine representatives on the Assam

Legislative Council will be able to discuss every question excepting their own backward areas, and they will be able to take part in all questions concerning Assam except the backward tract for which they are going to be the representatives in the Council ?—That is so.

13,746. Is not that anomalous ?—It is anomalous, and many of these very difficult questions are bound to be anomalous. It is to avoid the risk on the other side, namely, this : Here we are dealing with very uncivilised people ; I do not know how many expeditions there have not been in recent years for stopping head-hunting, and so on. I am nervous of opening the door to a discussion that may set the whole place in a blaze.

13,747. What is the point in giving these backward tracts representation in the Legislature ? What are those representatives instructed to do ?—We are not giving representation. We are constantly confusing two different things, namely, the totally and the partially excluded areas. We are not contemplating representation from the totally excluded areas.

13,748. I am mistaken. Do I understand that these nine seats reserved for the backward tracts will give representation to the partially excluded areas in Assam ?—Yes.

*Mr. M. R. Jayaker.*

13,749. Do not you think the result of your proposals will be, as regards these agencies which are, at the present moment, carried on, some by Indian politicians and some by Indian reformers, for the purpose of improving these people gradually, that their influence will be considerably curtailed by this sort of isolation of these areas from the benefits of public criticism ?—I do not think so. So far as I know no obstacle is being put in their way now ; indeed, I imagine every encouragement is given to them. I see no reason why there should be a change.

13,750. Nobody would take any interest in these matters, because they are out of the purview of the Legislature ?—I do not think so. I do not think people take no interest in anything if it does not come

within the purview of the House of Commons here; in fact, I think rather the contrary is the rule.

13,751. May I ask you one or two questions about paragraph 106. You explained yesterday, in reply to some question, that you proposed to annex a list to the Constitution Act?—Yes.

[Mr. M. R. Jayaker.] Will that be a final list or will that list be added to.

Lieut.-Colonel Sir H. Gidney.

13,752. Or subtracted from?—It would be a list no doubt with a power by Order in Council, or whatever might be the machinery, to make alterations, but we should assume that that power would be exercised for diminishing the areas and not for increasing the areas, or transferring areas from one category to another.

Mr. M. R. Jayaker.

13,753. That is what I wanted to know. You are contemplating that in course of time what is a totally excluded area will pass into the list of a partially excluded area and what is a partially excluded area will pass into the list of the reformed scheme Provinces. You are contemplating such a change in course of time?—Yes. I think that would be generally true provided that when one uses the expression "in course of time," one does not assume it would be a short time in certain cases.

13,754. I am not assuming that. Do you contemplate any form of machinery by which the change shall take place, that is to say, by which a totally excluded area will pass into the category of a partially excluded area and a partially excluded area will pass into the scheme of the Provinces. Are you going to provide a periodical enquiry by Parliament or a report by the Governor?—I think a periodical enquiry would be objectionable and risky. I think it is much better to leave it to the Governor and his staff and to proceed by Order in Council. After all, we are dealing with comparatively small areas compared with the great size of India. This is not a big problem.

13,755. What I want to know is, who is to take the initiative? When you allow the Legislature to pass a resolu-

tion recommending that a certain Partially Excluded Area be now absorbed into the Province, who is to take the initiative?—I think that might easily happen. If in the course of development such a situation arose, then I think there would be such a resolution in the Legislature.

13,756. Not about a Totally Excluded Area?—No. In the case of the Totally Excluded Area I agree there is a difficulty; there is this block at present.

13,757. Supposing that time is reached, whose business will it be to take the initiative?—It would be the business of the Governor-General making representations and the procedure being by Order in Council. That is our proposal. I think Mr. Jayaker will agree that in the case of the Assam Tracts that kind of contingency looks as if it is a long way off.

13,758. I do not know enough of the Assam Tracts to say that. I am only asking on the question of principle. There must be some machinery by which it could be done. Do you see many difficulties in a Parliamentary Inquiry periodically?—I do not like these periodic Inquiries, for this reason: They stir up a great deal of agitation. That is just what one wishes to avoid, particularly with these very inflammable areas; and the trouble with a periodic Inquiry is that as soon as you say you are going to have a periodic Inquiry immediate agitation starts to have it at once.

Sardar Buta Singh.

13,759. May I know if any part of an Excluded Area has so far been excluded from that category and become a Partially Excluded Area?—Yes; indeed Sir Malcolm tells me that that has happened in certain cases.

Mr. M. R. Jayaker.

13,760. I am going to ask you one or two questions about Proposal No. 107, Sir Samuel. I understood from yesterday's discussion that as regards the Partially Excluded Areas they will be normally subject to the administration of the Province under the Minister?—Yes.

13,761. Subject to an overriding power in the Governor to interfere?—Yes.

13,762. What kind of cases do you have in view where the Governor will interfere? I imagine they will not be confined to those specific cases in paragraph 70?—No. The kind of case (I do not know whether it is a good one or a bad one) that comes to my mind is this, that in certain of these areas law and order may be in the hands of their own village headman. In that case the Governor would withdraw those areas from the ordinary police administration of the Province.

13,763. But you will have in the Instrument of Instructions to the Governor some indication as to the kind of cases in which he shall interfere?—I had not contemplated any specific reference to this point in the Instrument of Instructions. You see, Mr. Jayaker, it occurs to me it would be difficult to put anything in the Instrument of Instructions specifically about this for this reason, that the Partially Excluded Areas do differ very much one from the other, and what might be quite suitable in one would be not at all suitable in another.

Dr. Shafa'at Ahmad Khan.

13,764. There is a provision in the recent Governors' Instrument of Instructions regarding the Governor's power of interference?—Yes, we could look into that point. I do not know whether it would meet Mr. Jayaker's point. I do not think it would. That is a more general point.

Mr. M. R. Jayaker.

13,765. But that would be a wider power of interference than in paragraph 70, I imagine. It will not be confined to any specific topic; the Governor can interfere on any occasion?—Yes, in the partially excluded areas.

13,766. Therefore, I thought it would be better if something could be said in the Instrument of Instructions as regards what special care the Governor is to take. Take the exploitation of these poor ignorant people by Indian and European exploiters taking mining rights by giving them just a few trinkets, for instance, or the labour-employing agencies which often come from foreign States, from the Fiji Islands—all these people come in and trade amongst these ignorant people, and

by taking advantage of their ignorance secure their employment. Now will you state something in the Instrument of Instructions being within the special care of the Governor regarding the protection of these ignorant people from such ravages?—Yes, I think we might certainly consider a suggestion of that kind. Indeed, it would be in accordance with what is generally the present practice. I think it is the present practice to call the attention of the Governors to their responsibilities for these areas in the existing Instructions.

13,767. That is what I was suggesting?—Yes; I think we might well look into that point and see whether we could make the Instructions to the Governor applicable to the proposals in the Constitution Act.

13,768. Now there are only one or two more points I want to put to you. I understood yesterday from your replies that in the case of the partially excluded areas there will be no separate Budget for those areas?—That is so.

13,769. Supposing, for instance, there are 100 square miles excluded in a certain Province, the Budget for the 100 square miles will be included in the general Budget of the Province?—Yes, that is so.

13,770. Supposing, for instance, when that Budget is being discussed (I am pointing out a difficulty that is troubling me) a Member gets up and moves a token cut in a certain item as a means of bringing public opinion to bear by way of condemnation of certain acts that have happened there, then the Governor-General refuses to allow him to make that resolution; that is under Proposal 109. Supposing a token cut is moved in the course of the Budget discussion, will the Governor have power to refuse any discussion of it under 109?—Yes, he would have power to do that.

13,771. It would be very hard on the Legislative Council to ask money from it and not allow any discussion upon it or any question to be raised with regard to it?—We had assumed that it would depend upon the circumstances of the case, and if it looked like a *bona fide* motion for a discussion no doubt the Governor would allow it. I am not sure whether Mr. Jayaker is dealing with the

partially excluded areas or with the totally excluded areas.

13,772. I am speaking of the partially excluded areas?—The Governor would have the power either to allow it or to disallow it.

13,773. Normally, questions would be allowed?—Yes, perhaps.

13,774. If the Governor disallowed a question which arises in the course of the Budget discussion it would seem extraordinary that the money is to be had from the Council and no discussion is allowed. If, on the other hand, he allows questions which come up in the course of the Budget discussion, then Proposal 109 would be avoided on every question?—The Budget, of course, does only come once a year, and that means that a discussion of this kind would only take place once a year; it would not be constantly coming up in the Chamber.

13,775. But many grievances come up in the course of one year, speaking of the Indian Legislature?—Yes.

13,776. I mean, your Proposal wants money from the Legislature, but it will not allow the Legislature to discuss questions relating to those areas. That is the trouble which I feel?—I think we must all of us weigh up the arguments on both sides. They are strong arguments on both sides, and the Committee and the Delegates must give their minds to them both.

*Sir Austen Chamberlain.*

13,777. May I interpose a question? Do I understand that the money required for the partially excluded areas would be a voted service. I had understood the Secretary of State to say on the last occasion that the money needed would be non-votable?—It would be voted, but the Governor could insert it in the Budget if it was not voted. If the Chamber refuses to vote it the Governor would then add it.

*Mr. M. R. Jayaker.*

13,778. That is under Proposal 96?—That is under Proposal 96. The difficulty Sir Austen will see in making it non-votable is that in a partially excluded area it really is a part of the general Provincial expenditure.

*Sir Austen Chamberlain.*

13,779. May I put one further question? Turn to the totally excluded area?—In the case of the totally excluded area the administration is not the ordinary Provincial administration. On that account it is easy to keep the two accounts separate. In the case of the totally excluded area it would be non-votable.

13,780. And could not under any circumstances, therefore, appear in a form which would give rise to discussion on the Budget?—No, that is so.

*Marquess of Salisbury.*

13,781. Might I just put a question upon the Secretary of State's answer about the partially excluded areas? If it is voted primarily by the Legislature it would not be possible for the Governor to forbid discussion, because it would be the very elements of the vote?—Under Proposal 109 he could stop discussion.

13,782. How could the Legislature vote the money unless they discussed what purposes it was going to be voted for?—The discussion could be stopped upon that particular incident. Presumably, if the procedure is like our own procedure here, somebody would make a motion for the reduction of a vote in order to call attention to a particular bit of administration in the partially excluded area. Under Proposal 109 the Governor could stop that motion.

*Lord Rankeillour.*

13,783. And does not exactly the same difficulty arise in the Federal Legislature under Sections 49 and 52?—One could not give a general answer to a question like that because one would have to go in detail into all these various provisions.

13,784. I was thinking of the words in Section 49—"will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor-General and of expenditure required for the discharge of the functions of the Crown in, and arising out of, its relations with the Rulers of Indian States," and then the Governor-General's consent is required to various subjects of discussion under Section 52 (b). I suggest that the same sort of

difficulty arises there?—I would not here compare the procedure at the Federal Centre in questions of this kind with the procedure about the excluded areas; the two questions are so entirely different. Speaking generally, in the former case we do not think that the discussion would be dangerous in the same way that it would be in the latter case.

Major C. R. Attlee.

13,785. May I ask in the case of the Budget proposals in a Province would the grants distinguish expenditure in the Province generally under any particular heading, such as Education, Public Health, etc., and would there be a separate sum for the partially excluded area? If not, you could not avoid having a general debate upon the amount as divided between them?—It is very difficult to give a specific answer to a question of that kind. I would have thought (I do not know what Sir Malcolm would say) that in most cases it would form a part of the general vote rather than be a specific vote, but I would not like to exclude the possibility of a specific vote. (Sir Malcolm Hailey.) It would form part of the general vote unless any special service was devoted entirely to the partially excluded areas such as a special school establishment, or the like; otherwise, it would form part of the general vote.

Lieut.-Colonel Sir H. Gidney.

13,786. I know that in Assam, in the partially excluded area, those objects are served by the Governor himself from his special funds—such as Public Health. I remember starting a leprosy campaign there and that was done by special funds and other things like that?—That would be a wholly excluded area, of course. We are speaking of a partially excluded area.

Mr. M. R. Jayaker.

13,787. With regard to Proposal 108, Secretary of State, there both kinds of areas are included—excluded areas and partially excluded areas. Is not that so?—(Sir Samuel Hoare.) Yes.

13,788. And you maintain no distinction between the two so far as the provisions of 108 are concerned?—Not for the purposes of legislation.

13,789. But do you not think that in order to carry out the idea of a partially excluded area, namely, that it is normally subject to the administration of the Province, with an overriding power in the Governor, it would be better to limit Proposal 108 to excluded areas and as regards partially excluded areas to rely upon the provisions of Proposal 92: "In order to enable the Governor to discharge the 'special responsibilities' imposed upon him, he will be empowered at his discretion: (a) to present, or cause to be presented, a Bill to the Legislature, with a Message that it is essential, having regard to any of his 'special responsibilities' that any Bill so presented should become law before a date specified in the Message; and (b) to declare by Message in respect of any Bill already introduced in the Legislature that it should, for similar reasons, become law before a stated date in a form specified in the Message." The peculiarity of Proposal 92 is that normally the laws of that Province apply to the area, excepting that the Governor can come in under a special responsibility and stop certain laws being enacted, either with or without amendments, in the form in which he desires, and that will apply to the Bills to be presented and the Bills which have already been presented. Do not you think that that power is sufficient in the case of the partially excluded areas? We are told that there is really a great danger with these partially excluded areas of inappropriate legislation being introduced. It has been put very strongly to us that this precaution is a very vital one.

13,790. But the Governor can stop legislation even from coming before the Legislature. He can interfere in preventing legislation, too. What I am pointing out is that you remove the distinction in Proposal 108 between an excluded area and a partially excluded area, and it is not necessary to go so far. It is quite sufficient, I submit, that if you give the Governor the power, according to Proposal 92, you practically have an adequate safeguard to prevent legislation from coming in. I should like you to consider that question, Secretary of State?—I will certainly consider all these points of Mr. Jayaker's, but I must not be taken to give the impression

that I do not think these precautions are necessary.

Mr. M. R. Jayaker.] I am not dealing with the precautions ; I am putting some of the difficulties which I feel.

Sir Austen Chamberlain.

13,791. Will the Secretary of State at the same time reconsider the point raised by Mr. Jayaker about the inclusion of this expenditure in the Budget ?—Yes.

13,792. I see the Secretary of State's difficulty, that where legislation can be generally applied and is part of the general administration, it is appropriate that the Legislature should discuss it, but when the Secretary of State dwells so much upon the conceivable dangers of a discussion, is he really satisfied that the Governor could prevent the discussion if the money touching those points is once in the Budget ?—I will certainly look into all these points again. They are difficult points.

Mr. M. R. Jayaker.

13,793. Then my last question is about what you answered yesterday, Secretary of State, as regards certain deficits being made good by the Centre. Do you remember that answer ?—Yes.

13,794. Will that be a case falling under Proposal 144 : " Provision will be made for subventions to certain Governors' Provinces out of Federal revenues of prescribed amounts and for prescribed periods " ?—Yes, it would be under Proposal 144.

13,795. My difficulty is this, that you interpret Proposal 144 and explain it in the Introduction in Paragraph 59 at page 30. If you will turn to that paragraph at page 30, you say : " It is also anticipated that certain Provinces will be in deficit under the proposed scheme. The North-West Frontier Province will (as now) require a contribution from the Centre in view of its special position." And it goes on. Then you mention Sind and Orissa, and then you mention Assam, and then you say : " It is intended that these Provinces should receive subventions from Federal Revenues. These subventions may be either permanent or terminable after a period of years." There is nothing to indicate that the

subventions mentioned in this paragraph and in paragraph 144 are subventions in order to make up the deficit caused by expenses over excluded areas ?—I think we might very well make that clearer..

Sir Phiroze Sethna.

13,796. In reply to Mr. Jayaker, Secretary of State, you observed that it is the intention to decrease in course of time and if advisable, the sizes of excluded areas or partially excluded areas, but, if I remember rightly, you said yesterday that you proposed to include in the Constitution Act a list of both excluded and partially excluded areas, and you would reserve the right of enlarging these areas ?—No, I did not say anything about that.

Sir Phiroze Sethna.

13,797. I stand corrected ?—Indeed, my proposal of including these areas in a schedule was to show how very limited they were in extent and in order to avoid the misapprehension that has grown up that it might have been our intention to exclude very large tracts from the scope of the ordinary administration.

Sir Hari Singh Gour.

13,798. The areas now described as excluded and partially excluded in the White Paper find no place in the present constitution ?—(Sir Malcolm Hailey.) I do not get the exact point.

13,799. The general point I am making is that under the General Clauses Act, the definition of " British India " would include both excluded and partially excluded areas ?—Under the General Clauses Act ?

13,800. Yes ?—Yes.

13,801. Therefore, under Section 65 of the Government of India Act, the Indian Legislature has power to make laws for all persons for all codes and for all places and things within British India. Therefore, the legislature at the present moment under the present constitution has the power to legislate as regards both excluded and partially excluded areas ?—I think Sir Hari Singh Gour has forgotten Section 52 (a) of the Government of India Act which gives the Governor-General power to take that out.

13,802. That is perfectly clear. The point I am making at the present moment is that the Indian legislature at the present moment has, generally speaking, the power of legislating both in respect of excluded and partially excluded areas?—Subject to any notification issued under Section 52 (a).

13,803. Has any notification been issued under Section 52 (a) curtailing the power of the Indian legislature?—Yes; I think you will find this as applying at all events, to take one typical example, to Spiti, another to Darjeeling, if you have this book.

13,804. I have that book. I am referring to that very book?—You will find those there, referring, at all events, to Spiti in the Punjab, I think to the Laccadive Islands, and Minicoy, and to one or two other small places at the same time.

13,805. Except these one or two small places which have been excluded by the notification under Section 52 (a) of the present Government of India Act, is it not the fact that the Indian legislature possesses power to legislate in respect of all other areas?—Yes, that is so, except those that are excluded by notification.

13,806. Yes; I have already said that?—Yes.

13,807. Do you propose to add to the future Constitution Act to limit the areas to those comprised in the notification under Section 52 (a), or would your exclusion be not only of those areas, but many other areas generally described and comprised in the Scheduled Districts Act of 1874?—No, the disability for legislation would apply only to areas which had already been notified under Section 52 (a). There would be no extension of the area.

13,808. That is to say, that so far as the power of the future Indian legislature to legislate is concerned, only those areas which are notified under Section 52 (a) would be exempted from its jurisdiction?—Those would be the only areas affected, yes.

13,809. Therefore, the future Indian legislature will have the unfettered power to legislate in respect of the other areas, whether they are partially excluded or not?—Yes; that is so.

13,810. And therefore it follows that having the power to legislate it will have also the power to discuss the propriety of legislation as it now has?—Yes, certainly.

13,811. And neither the Governor nor the Governor-General at the present moment has the right to fetter the discretion of the legislature in regard to discussion?—Save in certain cases where he can disallow resolutions.

13,812. I am not dealing with resolutions; I am dealing with discussion?—Discussion, yes.

13,813. Under the future constitution, however, you are giving the Governor a larger power than he possesses under the present constitution?—Not in regard to those particular areas.

13,814. Are they not comprised in paragraph 109 of the White Paper? Please consider paragraph 109 of the White Paper?—There is no area which will be included under the present scheme in paragraph 109 which is not already provided for in notifications under section 52 (a). I think I am right in saying that is substantially the fact. If you compare them you will find that they are substantially the same. (Sir *Samuel Hoare*.) They are substantially the same, and these powers about the prohibition of discussion are actually the powers that are in operation now. (Sir *Malcolm Hailey*.) You will find them in these notifications. (Sir *Samuel Hoare*.) If you look at pages 258 and 259 of the Government of India Act, you will see them set out. (Sir *Malcolm Hailey*.) That refers particularly to Spiti, Darjeeling and Chittagong. (Sir *Samuel Hoare*.) Speaking generally, the areas are the same, and the powers are the same. The case is even better from Sir *Hari Singh Gour*'s point of view. The areas are smaller in extent than the areas notified under section 52 (a), and the powers retained are very much the same.

Lieut.-Colonel Sir *H. Gidney*.

13,815. Are there any additional areas?—No. (Sir *Malcolm Hailey*.) That is so. There is no area proposed under paragraph 109 which is not already covered by notification under section 52 (a), and some of the areas covered by

notification under section 52 (a) will not be included in paragraph 109.

*Sir Hari Singh Gour.*

13,816. As regards paragraph 109, am I right in supposing that discussions in the provincial legislature or asking questions on any matter arising out of an excluded area are barred, but the same provision would not apply and extend to the Federal legislature?—(Sir *Samuel Hoare*.) It would extend everywhere.

13,817. But you have only specified the provincial legislature?—You see, Sir *Hari Singh Gour*, the Federal legislature could only deal with Federal subjects.

13,818. Quite 'right—And this would not be a Federal subject.

13,819. But these areas will be fed by Federal finance?—One area will be.

13,820. That is the area I am dealing with?—Yes.

*Sir Hari Singh Gour.*] Therefore, this area being supported by Federal finance, the Federal legislature should have the power to discuss questions arising out of the budget relating to that area.

*Sir Austen Chamberlain.*] Is Sir *Hari Singh Gour* speaking of the totally excluded area?

*Sir Hari Singh Gour.*] Yes; I am pointing out that the words "provincial legislature" are used in paragraph 109.

*Sir Austen Chamberlain.*] I understood Sir *Hari Singh Gour* to say that whilst the provincial legislature might be prohibited from discussing, the money might appear in the Federal budget and the Federal legislature would therefore be able to discuss the affairs of the totally excluded area.

*Sir Hari Singh Gour.*] Yes; that there is nothing in paragraph 109 to preclude the Federal legislature from discussing that question.

*Sir Austen Chamberlain.*

13,821. I thought the Secretary of State said in answer to me a moment ago that the affairs of the totally excluded area would neither be votable nor discussable?—Yes, I did, and I contemplate that the provincial subvention would certainly not come up for discussion in the Federal legislature year by year. I

am assuming that these subventions, for instance, to Assam and Bengal would be made once for all.

*Sir Hari Singh Gour.*

13,822. They might be made once for all, but they are always part of the annual budget as Sir *Malcolm Hailey* will point out?—(Sir *Malcolm Hailey*.) No; they would not come up in the annual budget if, for instance, instead of being made, in the form of a grant they were made in the form of a share of taxation as in the case of the jute tax. It depends on the form in which it is made.

13,823. The form is uncertain; therefore, I say, so far as the Federal legislature is concerned, it cannot be precluded from discussing these questions when it is to finance the administration of the excluded areas?—It would depend entirely on the form that the subvention takes. If it took the form of an assignment of taxation, as it might very well do, then it would not appear in the budget in a form which would render it liable to discussion.

*Sir Austen Chamberlain.*

13,824. But if it took the form of a grant in aid annually out of the equivalent of the Consolidated Fund of such and such a sum for the excluded area, would it then be votable and discussable?—It would be discussable, Sir, if it appeared among the annual grants, but, of course, it is possible that the Indian legislature might adopt your form of permanent appropriations for Consolidated Fund charges, which would not appear annually.

13,825. But, Secretary of State, is it not evidently a matter which, if we accept your thesis that it would be dangerous to discuss these things, must be laid down by superior authority, and must not be left to the judgment year by year of the Indian legislature which might underrate the dangers of which you speak and wish to insist on its right to discuss?—(Sir *Samuel Hoare*.) I had certainly assumed that these provincial subventions would not come up for periodic discussion. I can see every kind of objection against their coming up constantly. I think they would make great



friction between the Federal centre and the Provinces. I have assumed that the allocation would be made to the deficit provinces, and once made, it would then not be susceptible to discussion by the Federal legislature.

Archbishop of *Canterbury*.

13,826. May I ask for information ? Is not that what you mean in paragraph 144 by our friend the word "prescribed" ?—That is so.

13,827. That it must be for a definite period, not renewable year by year. Therefore, it would not be anything of the nature of a grant in aid ?—Yes.

*Dr. Shafa'at Ahmad Khan.*

13,828. Did not the Federal Finance Committee of the Third Round Table Conference state precisely what you have just said ?—Yes ; I think that is so.

13,829. With regard to the subvention to the Provinces ?—I think myself that anything in the nature of annual grants in aid from the Centre to the Provinces would lay the Federation of the Provinces open to every kind of difficulty.

*Sir Austen Chamberlain.*

13,830. I have a note that when we were discussing paragraph 144, the Secretary of State explained that by "prescribed" he meant prescribed by an Order in Council ?—Yes.

*Sir Austen Chamberlain.*] In that case, surely it would not appear in the Budget ?

*Dr. B. R. Ambedkar.*] May I draw your attention to paragraph 149 ?

Archbishop of *Canterbury*.

13,831. May I have the answer ?—(*Sir Malcolm Hailey.*) It would have to appear in the Budget if although prescribed by Order in Council it came in the form of an annual grant. There would be certain things laid down by Order in Council of another nature, and they will all come in the Budget if they come in the form of an annual grant. But, of course, you have not yet decided here what procedure you will really follow for appropriation. When you come to decide that question, you can provide that these things should not

come under discussion if they form permanent appropriations. My point was that if they appeared in the annual Budget, as they would do in our ordinary procedure, then even though they were prescribed by Order in Council they would be subject to discussion unless you add a sentence to Proposal 49 to make it clear that they should not be subject to discussion in the same way as the salary and allowances of the Governor-General, and so forth.

*Sir Austen Chamberlain.*

13,832. Secretary of State, without pronouncing any opinion upon whether the purpose you have sought to secure is the right one to aim at, that is to say, that there should not be a discussion, is it not clear that if that is your purpose, you must amend your White Paper ?—(*Sir Samuel Hoare.*) No ; I would not say amend the White Paper ; I would say make our intentions rather clearer.

*Sir Austen Chamberlain.*] I thought that might be an amendment and even an improvement.

*Lord Irwin.*

13,833. With regard to this discussion, might I ask *Sir Malcolm Hailey*, for my own information, whether Section 67 (a) of the Government of India Act is not relevant which provides in sub-section (iii) that the proposals of the Governor-General for the appropriation of revenues, moneys and so on, relating to the following heads of expenditure shall not be submitted to the Vote nor shall they be open to discussion at the time when the annual Statement is under consideration unless the Governor-General otherwise directs ?—(*Sir Malcolm Hailey.*) That would guide existing procedure, but, in the future, the question of discussion will be regulated by paragraph 49 of the Proposals of the White Paper.

13,834. Yes ; I appreciate that. The only point of my question was to ascertain whether, if it was discovered that—on the assumption that *Sir Austen Chamberlain* made—it might be thought desirable to take steps to preclude discussion in certain cases, the procedure that at present prevails, under Section 67 (a) would not in fact be effective

to do it?—If that procedure were repeated in the Statute. You would have to repeat that procedure in the Statute, and I would suggest that the way to do it is simply by adding a word or two to Proposal 49 of the White Paper.

*Sir Austen Chamberlain.*

13,835. It is quite clear that paragraph 49 gives no such power at present?—That is so.

*Lord Rankeillour.*

13,836. Might I ask Sir Malcolm Hailey what is the procedure with regard to the expenses of Chief Commissioners of Provinces? In paragraph 49 (v) it mentions it with regard to Baluchistan, but not as regards the others. Does that form part of the Federal Budget and is that discussable?—Yes.

13,837. Except the actual salary of the Chief Commissioner himself?—It is not votable but is discussable.

*Dr. B. R. Ambedkar.]* Everything in Section 49 is discussable.

*Sir Hari Singh Gour.*

13,838. Some of the items in the budget of the Chief Commissioner are also votable?—Yes. Section 49 excludes very little indeed from discussion, although it excludes a great deal from the vote.

*Mr. Zafrulla Khan.*

13,839. It excludes nothing from discussion except the salary and allowances of the Governor-General and of expenditure required for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States?—That is all.

*Mr. Zafrulla Khan.]* All other items therein specified are non-votable but they are discussable, and expenditure on Excluded Areas is expressly one of them.

*Sir Hari Singh Gour.*

13,840. The discussion that has so far taken place, Secretary of State, does not, I hope, make you believe, that we are in favour of tightening up the provisions of Article 49. We think that the provisions of Article 49 should stand as they

are and that the provisions of Article 109 should be understood in the sense in which they would ordinarily be understood, namely, that the prohibition only extends to discussion in the Provincial Legislature and not in the Federal Assembly. Now under the proposals of the White Paper, supposing the Governor-General and the Governor want to consult their respective Legislatures on the subject of Excluded Areas, you have given them no power to consult?—(Sir Samuel Hoare.) Partially Excluded Areas, yes.

13,841. No; I am talking of the Excluded Areas. You have given them no power to consult?—That is so.

13,842. But why should you not have given them the discretion to consult the Legislature if they so desire?—That is the question we have been discussing at some length this afternoon really. I have my own views. I quite accept the fact that they are not the unanimous views of everybody in the room.

*Sir Abdur Rahim.*

13,843. I want to know what is the position as regards the towns of Darjeeling and Ranchi, which are the Summer capitals of Bengal and Bihar. Are they Partially Excluded Areas?—(Sir Malcolm Hailey.) Darjeeling was a Totally Excluded Area, Ranchi, I think, was a Partially Excluded Area.

13,844. In the municipal limits too, or the district? These are the Summer capitals of two Provinces, are they not?—I think the whole of Darjeeling was excluded.

*Sir Hari Singh Gour.]* Including the Government House, possibly.

*Sir Abdur Rahim.*

13,845. Darjeeling is very largely inhabited by civilised Indians and Europeans, but you keep it Partially Excluded?—(Sir Samuel Hoare.) Yes.

13,846. But you have got the power and you propose to follow the policy of transferring Partially Excluded Areas to the ordinary scheme of Provincial Government?—When the conditions are suitable.

13,847. But do you not think that as regards Darjeeling and Ranchi conditions are quite suitable?—No, we do not, or

we should not have put them in the Schedule.

13,848. Of course, you have made your policy quite clear to us. I want to know as regards Delhi, which is the Capital of All-India—?—That does not come in here; Delhi is not an Excluded Area in any way.

13,849. I thought some questions were put regarding Delhi. Now as regards the Partially Excluded Areas, so far as I read the Memoranda of Dr. Hutton and Wing-Commander James, I gather that the people inhabiting these areas, the aboriginal tribes, are liable to become the victims of moneylenders and are likely to have their land swindled out of them, and they are also liable to fall victims to certain forms of litigation. These are evils which are not confined to these tribes?—No, but they are much more dangerous to people who cannot defend themselves.

Sir *Abdur Rahim*.] I do not know the source of your information, Secretary of State. Take the peasantry of Bengal. They are very badly the victims of moneylenders, and in the Punjab they had to pass an Act prohibiting any usurious transactions of that nature.

Mr. *Zafrulla Khan*.] We do not want to be declared an Excluded Area for that reason.

Sir *Abdur Rahim*.

13,850. I mean that these are the evils which are very common in India?—Perhaps they are common, but in some places they are worse than in others.

13,851. Are there any other special reasons why they should be excluded from Provincial administration?—I thought I had given all the reasons which impressed me for treating these areas as very exceptional areas. If any Member of the Committee or any Indian Delegate want more details, they will find a number of details set out in the Report of the Statutory Commission. I have got here a number of pages giving a series of cases in which the attempt to impose upon these Backward Areas legislation and systems of legislation that were unsuitable to them led to great trouble and in some cases to very serious risings.

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13,852. They could be prevented by the exercise of the special responsibility and the special powers of the Governor?—We feel that that is the whole basis of these proposals—that these are exceptional areas and they want further exceptional treatment.

Dr. *Shafa'at Ahmad Khan*.

13,853. There is only one point I want to ask you about, Secretary of State. With regard to the subventions to the Provinces, we made the following recommendation to the Government at the Third Round Table Conference. I will read this passage: "We consider that there should be an enquiry shortly before the new order is inaugurated in the Provinces, as a result of which the amount of any subvention, where necessary, and its duration (if only required for a limited period) would be finally determined. It is important that the decision should be final, as periodic revision could not fail to react on constitutional independence and financial responsibility." I hope that this recommendation will be made absolutely clear in the White Paper so that the financial autonomy of the Provinces may not be undermined or seriously affected?—I agree with the suggestion in Dr. Shafa'at Ahmad Khan's question. It is most important that these subventions should not be regarded as ad-hoc which can vary from year to year but they should be prescribed payments with the definite intention of setting the Provinces upon an even basis for making their own arrangements in the future.

Mr. *Zafrulla Khan*.

13,854. Secretary of State, I am sorry to recur again to the matter of the prohibition of discussion and questions under proposal 109, but I have one or two suggestions to put to you in connection with them. May I first take the case of the Partially Excluded Areas. There, I understand, the position is this. Normally the administration will be Provincial subject to the special responsibility of the Governor?—Yes.

13,855. Therefore if the raising of any question or any discussion is likely to affect the discharge of the Governor's special responsibility you think he should have the power to prohibit that question and that discussion?—Yes.

13,856. As a matter of drafting would you have any difficulty in accepting the suggestion that at the end of this proposal these words may be added: "so far as it affects his special responsibility"?—I would not like to say Yes or No to a point of drafting offhand. Upon the face of it, it would not appeal to me to alter the intention of paragraph 109. I should like to look into the suggestion.

13,857. My suggestion is that it puts it upon a proper basis without interfering with the object you have in view. It will merely declare the purpose of that power to disallow questions and resolutions, but I put it forward for your consideration?—I am much obliged.

13,858. Now I am approaching, I am afraid, a matter on which there may be a difference between us, but the suggestion I make is this: As you are aware, there are two kinds of restrictions on questions, resolutions and discussions provided for in the White Paper?—Yes.

13,859. One is that these matters may be disallowed by the Governor or the Governor-General. Of course, if not disallowed they are put in the ordinary way or raised in the ordinary way in the Legislature. The other point is that some of these questions and resolutions with regard to some subjects can be put or raised but only with the previous assent of the Governor-General. Now with regard to the latter category, the difficulty that a question is tabled or a resolution is tabled and is disallowed by the Governor and causes irritation does not arise, because the question or the resolution does not appear unless previous sanction is given. Would you have any serious difficulty in accepting the suggestion that questions or resolutions or discussions relating to Totally Excluded Areas may be permitted with the previous assent of the Governor?—The reason that I gave earlier in our discussion against that suggestion is that that does imply a right of discussion, and that when you have implied a right of discussion you may have people constantly pressing to exercise it. You then in practice have the Governor, if he thinks the discussions are going to be dangerous, constantly being involved in

refusing permission. That is are reason that, so far, has impressed me.

13,860. Passing from that consideration for a moment, am I correct in assuming that the Governor of a Province, when dealing with a Totally Excluded Area (under your scheme it will be only the Governor of Assam, but it does not matter which Province it is) would be acting in that matter and responsible, as it were, to the Governor-General and would be subject to the control and direction of the Governor-General?—Yes.

13,861. Therefore any directions issued by the Governor-General to the Governor in certain cases would be described as action of the Governor-General taken in his discretion, in his relationship with the Governor?—That would be so, yes.

13,862. That being so, may I draw your attention to Proposal 52 of page 51? It would be action of a kind which is described in sub-proposal (b) (ii)?—Yes.

13,863. "any action of the Governor-General taken in his discretion in his relationship with a Governor"?—Yes.

13,864. You realise that with regard to such an action questions could be raised in the Federal Legislature and discussion could take place with the prior assent of the Governor-General?—Yes; that is so.

13,865. So that the distinction arises that these matters may be under these provisions, apart from the Budget provisions, with the prior consent of the Governor-General, discussed in the Federal Legislature, but could not be discussed in the Provincial Legislature?—Yes, it might happen. I suppose also the Governor-General might make rules to debar discussions of this kind.

13,866. Altogether?—Yes.

13,867. But the Proposal expressly says that the power of the Governor-General will be to prohibit, save with his own prior consent, the discussion of certain matters?—Yes, but I suppose under the rules of business he might prohibit a discussion of questions of this kind.

13,868. That being so, what is your difficulty now in not putting the Governor in the same position as you have put the Governor-General?—It is that he is nearer the danger point. A discussion

at the Federal Centre would not appear to me to be so likely to stir up trouble in these tribal districts as a discussion close by the spot might.

13,869. So long as there was a possibility of discussion in the Federal Legislature with the assent of the Governor-General I will not press the matter any further. I am not pressing that it may of necessity be in the Federal Legislature?—I am much obliged to Mr. Zafrulla Khan for making this distinction between the two and I will look into it again.

Mr. B. R. Ambedkar.] The same point would be secured if Proposal 49 remained as it is.

Sir Hari Singh Gour.] And Proposal 109 remained as it is.

Mr. Zafrulla Khan.] Except this, that in Proposal 49 you could only discuss it during the Budget, and under this with

the prior consent of the Governor-General you could discuss it at any time.

Archbishop of *Canterbury*.

13,870. Mr. Secretary of State, just one point. I was not quite clear when you said that the administration of even the partially excluded areas would be one in which the Governor-General would have a natural right to issue directions to the Governor?—I was dealing, your Grace, with the constitutional aspect of the problem, namely, that the chain of responsibility in all this field of special responsibilities is the Governor of the Province, the Governor-General, and Parliament. I was not meaning to imply that normally the Governor-General would be intervening in questions of this kind.

Archbishop of *Canterbury*.] I see. I thought you rather went beyond that in answering Mr. Zafrulla Khan.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow—10-30 o'clock.

19th October 1933.

Present :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Early of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

The Right Hon'ble Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :

*Chairman.*

13,871, Secretary of State, you are good enough to take the witness chair this morning and you are prepared to give the Committee evidence upon Federal and Supreme Courts, paragraphs 151 to 167 ?—Yes. I think I should like

to preface my evidence, if I might, by asking that the Memorandum that I have circulated should be published with the proceedings.

*Chairman.*

13,872. That shall be done ?—It is as follows :—

NOTE BY THE SECRETARY OF STATE FOR INDIA ON THE FEDERAL AND SUPREME COURTS.

A reconsideration of these paragraphs has led me to think that some of the proposals require further explanation and that others may perhaps need modification. Since the subject is a very technical one, I think that it may assist the Committee if I circulate the following explanatory note before our discussions on these paragraphs begin.

1. The first matter to which I wish to draw attention arises in connexion with paragraphs 156 and 157. I am anxious that there should be no misunderstanding as to the underlying intention of these paragraphs. It is, I think, agreed that, so far as constitutional issues are concerned, there should be a means of ready access to the Federal Court, which (subject always to a right of appeal to the Privy Council) will be the interpreter and guardian of constitutional rights. On the other hand, it is obviously impossible to allow the Federal Court to be overwhelmed with a mass of appeals based upon the mere suggestion that a constitutional issue is involved; and we, therefore, propose that an appeal should only lie by leave of the Court whose decision it is desired to challenge, or, if that Court refuses leave, by leave of the Federal Court itself, unless the value of the subject-matter in dispute exceeds a

specified amount, in which case an appeal will lie without leave. But we also intend, and the Committee will, no doubt, wish to consider whether express provision should not be included to that effect, that the Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay; though it would have to be made clear that this power could not be exercised where the Court from which the appeal is brought has already given leave to appeal.

2. The procedure contemplated by these proposals is, therefore, that a person who desires to appeal from the decision on a constitutional issue of the High Court of a Province or a State will ask that Court to state a Special Case for the decision of the Federal Court. If the value of the subject-matter in dispute exceeds a specified amount, it will be the duty of the Court to state a Special Case accordingly. In other cases, the Court will be entitled to accede to the request or to refuse it, as it may think fit; but if it refuses, the applicant will have the right to apply to the Federal Court for leave to appeal, and, if the application is granted, the Federal Court will then call upon the

Court by which the application has been refused to state a Special Case for its consideration.

3. As I understand it, the States have never dissented from the proposition that in some form or other the Federal Court should have power to pronounce upon any matter arising in a State Court which involves a constitutional issue. Some of them, however, have urged that a procedure such as that outlined above would subordinate their High Courts to an authority external to the State, and thereby derogate from the sovereignty of the Ruler. In my view this is to misapprehend the position which the Federal Court would occupy under the Constitution; for the Federal Court as an integral organ of the Federation will, for purely Federal purposes, be the Court no less of the States than of the other units of the Federation. I assume, of course, that any Ruler acceding to the Federation would undertake in his Instrument of Accession that his Courts would comply with any request of the Federal Court to state a Special Case and that effect will be given in his State to any decision which the Federal Court might pronounce, whether in the exercise of its appellate or original jurisdiction.

4. In this connexion I should like to make it clear that it is not intended by paragraph 160 that the Federal Court should possess any power of Federal execution, either in British India or in the States. It will pronounce judgment on matters which come before it, but those judgments will be carried out and made effective through the agency of the Courts from which the matter before it came.

5. In paragraph 162 there is no intention to give the Federal Court any power of control over the High Courts of British India such as the High Courts themselves possess over subordinate tribunals in the Province; no such power of control could in any event be exercised over the State Courts. It is, however, necessary that the Federal Court should be able to give a binding decision in any case in which it has original jurisdiction, and in the exercise of its appellate jurisdiction to designate, in any judgment which it may give, the

nature of the remedy, if any, which the Court from whom the appeal is brought ought in the opinion of the Federal Court to have granted.

6. In the preceding paragraphs I have endeavoured to explain, without suggesting any modification of them, certain of our proposals in Part IV of the White Paper. In the following paragraphs I desire to suggest for the consideration of the Committee the desirability of two modifications of the proposals as they stand.

7. Paragraph 156 limits the appellate jurisdiction of the Federal Court to cases involving the interpretation of the Constitution Act or of any rights or obligations arising thereunder, and no provision is therefore made for securing uniformity of interpretation in the several Provinces and States of Federal laws extending throughout the whole area of the Federation; though it is true that so far as British India is concerned, uniformity may to some extent result from the existence of a right of appeal to the Privy Council. Uniformity of interpretation is, however, no less important in the case of the States than in the case of British India. It seems to me that the proposals in the White Paper might be held open to criticism in this respect, and accordingly I suggest that the Committee might do well to consider the propriety of extending the appellate jurisdiction of the Federal Court so as to include cases involving the interpretation of Federal laws. If this suggestion finds favour I think myself that it would be necessary, and would, for all practical purposes, suffice (even though the distinction may not be an entirely logical one), to define "Federal laws" for this purpose as meaning laws with respect to matters included in List I of Appendix VI and not as including those with respect to matters in the concurrent field, with which the States are not in any event concerned. If this were done, the jurisdiction of the Federal Court in a State would, of course, extend only to laws on matters in List I which that State had accepted as a Federal Subject.

8. Paragraphs 163 to 167 empower the Federal Legislature if and when it thinks fit, to establish a Supreme Court of civil

appeal for British India, separate from and independent of the Federal Court, and thus competent to give final decisions in British India on all questions of the interpretation of Acts, Federal or Provincial, which do not involve constitutional issues. This proposal has been criticised on the ground that the establishment of two Courts of this kind, neither subordinate to the other, but each exercising a jurisdiction which, however, carefully defined, must almost inevitably from time to time overlap that of the other, is likely to lead to grave difficulties. I think that there is much force in this criticism. Doubts must necessarily arise from time to time whether one Court or the other has jurisdiction in a particular case (owing to the practical impossibility of separating rigidly questions of legal interpretation which do, from those which do not, involve constitutional issues), and undignified conflicts may ensue, which will detract from the prestige and reputation of both. I suggest, therefore, that the Committee might with advantage consider whether, in place of the scheme outlined in paragraphs 163 to 167 of the White Paper, provision might not be made enabling the Legislature, if and when it was thought desirable, to extend the jurisdiction of the Federal Court rather than to establish a new and (in a sense) competing Supreme Court. If the Committee were to adopt the suggestion which I have made in the preceding paragraph, the argument against the establishment of a separate and independent Supreme Court acquires additional force.

This modification, if it were to be accepted, would be, I suggest, an alteration rather in form than in substance of the White Paper proposals. Importance has been attached by eminent legal opinion in India to the desirability of ensuring that the Court of Civil Appeal for India if and when it is established, should be established on sound lines, and that its Judges should be of a calibre to command respect. These, as I understand it, are the main desiderata in the eyes of the protagonists of a Supreme Court; and the suggestion for the creation of a Supreme Court separate from the Federal Court was, I think, due in

part to the influence of an idea which had taken shape before the question of Federation or of a Federal Court became an immediate issue and in part to the assumption that it would be impossible to combine the functions of both in one organisation in a manner which would be acceptable to the States. Objections of the latter kind would, I suggest, be largely discounted if, as I assume, provision were made that the Federal Court, when endowed with the functions of a Court of Civil Appeal for British India, should be organised in two divisions, one of which would act as Federal Court proper and the other as Court of Civil Appeal: while the intentions underlying the White Paper provisions for a Supreme Court would, for all practical purposes, be met by the modification of those proposals which I have suggested and without involving the disadvantages attaching to a separate Court to which I have drawn attention.

It seems clear, however, that a modification on these lines of the provisions of the White Paper would preclude the possibility of empowering the Federal Court (as might not inappropriately have been done in the case of a separate Supreme Court) to entertain criminal appeals from British Indian High Courts: for the possession of such powers would involve so large an accretion of business not germane to the functions of a Federal Court as to obscure and overweight its primary purpose, and to necessitate an expansion of personnel which might seriously affect its quality, and thus the prestige of the Court as a whole. If, therefore, the Federal Legislature is to be empowered, if and when it thinks fit, to provide for a system of criminal appeals on the lines and of the scope indicated in paragraphs 166 (second sub-paragraph) and 167—a question on which considerable difference of view has been expressed by representatives of Indian opinion—the Court so erected would have to be entirely separate from the Federal Court and subordinate to the latter in the sense that the Federal Court would have to be entitled to call to its own file any criminal appeal which raised a constitutional issue.

9. I understand that fears have been expressed by some of the State that to



confer upon the Federal Court a jurisdiction extending beyond strictly constitutional issues would tend to push into the background its true function as an interpreter and guardian of constitutional rights, and that so large an increase in the personnel of the Court would be required as to make it difficult to secure Judges of the necessary standing and quality. I doubt whether these fears are well-founded, if the right of appeal to the Federal Court, on other than constitutional or Federal matters, were, in addition to limitation based on suit value, to be strictly limited (as I hope would be the case) to cases where some important point of law is involved or where a divergence of opinion among Provincial or State Courts renders a judgment of the highest tribunal desirable. I assume also, as I have already mentioned, that the Federal Court would, if its jurisdiction were extended in this way, sit in two divisions or chambers: and in that case I do not think that there would be any danger of its constitutional functions (in the stricter sense) becoming in any way submerged, nor that a small number of additional Judges would not be able to cope with the work involved. On the other hand, it seems to me that the dignity of the Court would be enhanced by making it the one final Court of Appeal (subject always to the right of appeal to the Privy Council); and a powerful and respected Federal Court is in my opinion essential to the successful working of the Federation.

Marquess of *Salisbury*.

13,873. Secretary of State, I am quite sure that the Committee have taken note of your wish that the Memorandum should be published. Indeed, if I may be permitted to do so, I would try to ask my questions bearing in mind all the time the Memorandum which has been circulated, although I feel specially incompetent to deal with these technical and legal issues. May I, first of all, ask how you contemplate that the Federal Court should be composed? I am quite aware of the phrases used in the White Paper in respect of it, but especially in view of the Memorandum the Federal Court is to be so important that one wonders whether there will be any

preference for lawyers to serve as Judges in the Federal Court. The Secretary of State will remember that the point was raised with regard to the High Court, and I recall that he was not willing to change the provisions of the White Paper in respect of the High Court, but I wondered whether the same answer applied to the Federal Court?—My Lord Chairman, we had not contemplated that there should be any Judges in the Federal Court who had not been barristers and, indeed, Judges. I do not think there has ever been a suggestion that there should be appointed to the Federal Court persons who had not had a definitely legal training and were members of the legal profession.

Marquess of *Salisbury*.] That is a very important answer.

Marquess of *Reading*.] May I just ask one question on that?

Marquess of *Salisbury*.] If you please.

Marquess of *Reading*.

13,874. Would that apply, Secretary of State, to the case of the Civil Servant who was serving in one of the High Courts? Suppose he qualified under one of your qualification paragraphs here, for example, having served for five years in a Chartered High Court, would that disqualify him because he is a Civil Servant?—The qualifications, Lord Reading, are set out in paragraph 153.

13,875. Yes, I was looking at them. I am only putting this to you to ascertain. Assume, for example, in the Service under the procedure which Lord Salisbury mentioned just now, and which was discussed before, he was appointed a Judge of the High Court, and assume that he has been a Judge for five years: if he had been a Judge of a Chartered High Court would not he be entitled then to be appointed a Judge of the Federal Court?—Yes, he would.

Marquess of *Salisbury*.] Qualified?

Marquess of *Reading*.

13,876. Qualified is quite right. That is what it means?—Yes, he would, and I should wish to qualify my answer to Lord Salisbury with this further answer: It would qualify him.

Marquess of *Salisbury*.

13,877. I thought that probably would be the answer, but at the same time surely the authorities would give a preference in matters which are going to deal with most technical and legal issues—surely they would give a preference to a man of legal training?—Yes, I think that is bound to happen in practice.

13,878. The new Memorandum as I read it does not affect the original jurisdiction so far as it goes of the Federal Court. That remains unaffected by the new Memorandum?—Yes.

13,879. The original jurisdiction of the Federal Court would be as in the White Paper to try constitutional issues as between the Federation and the units, or as between the units themselves, or as between the States and the units. There would be no private litigants?—Under the provisions of Proposal 155 that is so.

13,880. There, of course, is the special power of the Governor-General under Paragraph 161 to refer points of constitutional difficulty to the Federal Court?—Yes.

13,881. That corresponds, I think, to some provision in connection with the Privy Council?—Yes.

13,882. Then we come to what is new or partly new in respect of the appellate jurisdiction of the Federal Court. The phrase in the White Paper is very wide because it includes any rights or obligations arising thereunder—that is, under the constitutional statute. That would be very wide. I suppose the Secretary of State contemplates that it should be very wide. For example, if a private litigant brought an action about discrimination and then he took it to the Appeal Court, it would come before the Federal Court?—On appeal, that is so.

13,883. And not only discrimination, but as to whether a particular issue arose in the concurrent field as well as if it arose under a Federal statute or a Provincial statute: that would come before the Federal Court?—Yes, I think it would.

13,884. And all these questions we have discussed, as to whether a particular alleged statute in India was repugnant to an Imperial statute—any

issue of a private litigant which raised those points—would come before the Federal Court?—Yes.

13,885. So that it would have a very wide jurisdiction because that would include an enormous amount of litigation in India, would it not?—I do not know about the word "enormous." I am not sure.

13,886. I agree that the adjective is unnecessary and absurd—but a large amount?—It does cover a wide field and, indeed, I think it would be found that every Federal Court everywhere in every Federation must cover a wide field.

13,887. It is quite true that the appeal is not of right, but in the new Memorandum, on page 2, is shown the kind of litigation which is not to be accepted—the appeals which are not to be accepted because they are described as merely appeals for delay, or what are called vexatious or frivolous appeals, but any genuine appeal, although not of right, would be, in practice, accepted by the Federal Court?—Yes.

13,888. Up to a certain amount, of course, but in practice, even if they were not vexatious or frivolous, the right of appeal would be accepted by the Appeal Court in those cases?—Yes.

13,889. I wanted to make quite sure that we understood how wide the jurisdiction was. Then you would have appeals foreshadowed from the State Courts?—Yes.

13,890. There is a phrase (I think it is in the new Memorandum) which seems to show that the Secretary of State is not quite certain whether that right of appeal from the State Courts has been accepted by the States?—The position is really this, that in our previous consultations we have concentrated almost entirely upon a discussion of an appeal in cases involving questions arising out of the Constitution Act. We have come to the view that there must be some appeal also in cases involving the interpretation of a Federal law: that is the reason why I expressed myself in the way in which I have expressed myself in paragraph 3. I am drawing the special attention of the Committee and of the Indian Delegates to a feature of

the problem which has not taken a prominent part in the previous discussions.

13,891. So that I suppose we shall hear before the close of these discussions whether the Representatives of the States do accept the right of appeal from the State Courts to the Federal Court?—It is just for the purpose of concentrating that kind of discussion upon the problem that I have emphasised it in the new Memorandum. I certainly hope we shall have the views of the States' Representatives upon it.

13,892. And that, of course, if it were accepted it would not merely be upon issues between the State and the Federation, but I suppose a private litigant would raise issues depending upon the interpretation of the law of the Constitution?—Yes.

13,893. Then, merely to go through it, the appeal to the Privy Council is maintained as of right when it involves questions about the Constitution?—Yes.

13,894. Would that apply to private litigants as well as to cases between the units and the Federation?—Yes.

13,895. Then we come to the main provision of the new Memorandum, which supersedes, if it be accepted, the paragraphs dealing with the Supreme Court in the White Paper, and under that the Federal laws, as well as constitutional laws, will be the subject of appeal to the Federal Court?—Yes.

13,896. There are certain limitations which the new Memorandum suggests. I think an object which the Secretary of State has in mind is to limit the number of appeals which this would involve. I gather that it will differ in that respect from the provisions as to the Supreme Court in the White Paper under which all Provincial decisions would be subject to an appeal to the Supreme Court, with leave, of course, I mean, but they would be appealable to the Supreme Court?—I do not quite follow that point.

13,897. Under the paragraphs as they stand in the White Paper now providing for a Supreme Court there it would appear that the Supreme Court would be a Court of Appeal over all the High Courts of the Provinces?—Yes.

Marquess of *Salisbury*.] And not limited, except in so far as their discretion is limited to special kinds of law, but all the laws of the Provinces would be susceptible of appeal to the Supreme Court.

Marquess of *Reading*.] Is that so? I do not quite read it so. We will hear what the Secretary of State says about it.

Marquess of *Salisbury*.] I am perfectly certain that I shall be found to be quite wrong in many ways. It is a most technical matter.

Marquess of *Reading*.] We only want to get it clear. I think if you look at page 76 it says that there is a power to extend the jurisdiction.

Marquess of *Salisbury*.] If Lord Reading would look at paragraph 175—

Marquess of *Reading*.] But has not that gone—I think it has gone?

*Chairman.*

13,898. I think we had better have the Secretary of State's answer upon that?—I think I understood Lord Salisbury's question to mean: Does our change restrict the right of appeal from the Provincial Courts?

Marquess of *Salisbury*.

13,899. That is right?—The answer is No.

13,900. I draw attention to it just for the purpose of clearing it up?—Sir Malcolm wishes to amplify my answer a little bit. Substantially it is correct, but he wants to add a detail or two to it. (Sir *Malcolm Hailey*.) The original proposal of the White Paper was to constitute a Supreme Court which would hear all the appeals from Provincial Courts on all decisions at which they might arrive, whether those decisions referred to the interpretation of Federal law or Provincial law. The proposal now is that the Federal Court shall not only hear appeals referring to the interpretation of the Constitution, but also appeals whether from State Courts or High Courts referring to the interpretation of the Federal law. Subsequently if, what may be described as a Supreme Court side were added to the Federal Court,

then that Federal Court, on its Supreme Court side, would hear appeals from the Provincial High Courts on Provincial law also. That is only if the second stage were taken and what may be described as a Supreme Court side were added to the Federal Court.

*Marquess of Reading.*

13,901. That is only, is it not, if the power is subsequently extended?—Yes.

13,902. If I read the new Memorandum of the Secretary of State correctly, he limits the rights of appeal to the Supreme Court to constitutional questions and to Federal laws?—Yes.

13,903. But he suggests that there should be power given hereafter to extend this right of hearing appeals to other cases which would cover all such cases if so desired which would come otherwise under paragraph 165. That is to say, it would then be, if the right was extended, a Supreme Court of Appeal?—That is so.

13,904. And subject always to a limitation at present at any rate on criminal jurisdiction?—That is what I have described as a second stage—if the right were extended.

13,905. That is how I understand the new Memorandum?—Yes, but that would not apply to criminal cases.

*Marquess of Salisbury.*

13,906. No. Let us leave out criminal cases altogether for the moment. If that be so, may I call the attention of Sir Malcolm to the top of page 5 of the new Memorandum. There he will see that it is proposed to define the Federal laws for this purpose as meaning laws with respect to matters included in List I of Appendix VI and not as including those with respect to matters in the concurrent field?—Yes.

13,907. That is a limitation introduced into the new Memorandum which did not exist in the White Paper under paragraph 165 because then the laws in the concurrent field are not apparently to be appealable to the Appeal Court?—They would under the original proposal have been appealable to the Supreme Court.

13,908. When the Supreme Court is going to disappear and the Federal Court

is put in its place there will be this change and all the issues under List III on the Concurrent List will not be appealable apparently to the Federal Court, whereas they would have been appealable to the Supreme Court?—They will not at the first stage, but if the right of expansion which it is proposed to give in the Constitution were exercised, and what we have previously described as a supreme side of the Federal Court were constituted, then they would be heard by the Federal Court, but until that right were exercised they would remain with the Provincial High Courts and there would be no further appeal in India.

13,909. So that the answer of Sir Malcolm means that the later pledges of the new Memorandum are intended to supersede the earlier pledges. I am not making a polemical point, but I am calling attention to it just to make it clear, because under paragraph 5 it is clear that the concurrent field is excluded from the Federal Court?—As now proposed. (Sir *Samuel Hoare*.) Lord Salisbury I think, if I may intervene, is really talking about the two stages as if they were one. In the first stage there will be the Federal Court dealing with Federal cases. At the same time, power will be given to make this Supreme Court side of it. When the Supreme Court side of it is made, then there will be an appeal in the concurrent field, just as in the Provincial field, to the Supreme Court side of the Federal Court. (Sir *Malcolm Hailey*.) Might I add a word. In the White Paper, as you will see from paragraph 163, that was only an enabling provision to make a Supreme Court. It is still proposed to have an enabling provision to make a Supreme Court side of the Federal Court. In both cases, therefore, they are enabling provisions.

*Earl Peel.*

13,910. Will not it be almost essential to have that extension almost at once. You cannot allow, can you, in the concurrent field the Provincial Courts to decide whether the Federal law or the Provincial law should prevail. There is bound to be an appeal, is there not, almost at once on those points?—The field is one which is already with the

Provincial High Courts, the Federal law in the concurrent field. The Federal legislation in the concurrent field is only introduced in order to secure uniformity in the codes and in certain types of Legislation like labour legislation, and so forth.

Marquess of *Reading*.

13,911. But suppose a Constitutional question arose with regard to concurrent rights, then the Federal Court would have the power to deal with it on appeal, would it not?—Yes.

13,912. Unless it is expressly excluded, it would clearly come within Constitutional questions?—It would have to pass from the High Court or from the Federal side of the Federal Court if it happened to lie there at the moment, and be heard on that side of the Federal Court which would be dealing with Constitutional problems. If we suppose, for instance, there were two divisions, there would be one division dealing with that, and it would have to pass to that division. So, if any case of interpretation of the Constitution arose, whether in the High Court or on one side of the Federal Court, it would still have to be disposed of by that side of the Federal Court which dealt with Constitutional problems.

Sir *Austen Chamberlain*.

13,913. Is not that on the assumption that what has been called the Supreme Court side of the Federal Court has been brought into existence?—No. In any case that would be so. In no case, would the High Courts have the last word in dealing with the interpretation of the Constitutional law.

Mr. *M. R. Jayaker*.

13,914. May I ask a question on this point to clear it up? I am not sure whether I follow. Suppose a point arises as to the interpretation of the Federal law (not Provincial law) in the concurrent field, is that question to be finally decided by the High Court, and the party has no right to proceed further as regards the interpretation of such a law?—That is the proposal unless it raises a Constitutional issue, such as, for instance, of repugnance or the like.

13,915. Supposing a question arose as to which law is to prevail in the concurrent field; there is a Federal law and a Provincial law, and the question is which law is to prevail?—That is a Constitutional question. It is a question of the interpretation of the Constitution as to which law prevails.

13,916. Take a pure question of interpretation of Federal law in the concurrent field—I am not speaking of Provincial law in the concurrent field; that you can leave to the High Court—in the interpretation of such a Federal law is the decision of the High Court to be final and the party has no right to proceed to the Federal Court?—In the concurrent field, that would be the case, and an appeal would lie to the Privy Council and not to the Federal Court.

Marquess of *Reading*.

13,917. Why do you draw the distinction as regards that, as it is apparently merely this question of the concurrent field. I do not follow why the distinction is drawn. Your general scheme, as outlined by your Memorandum is, of course: on Constitutional questions an appeal to the Federal Court: Interpretation of Federal laws appeal to the Federal Court; a certain right of extension which I do not deal with at the moment at a second stage if it arises, but on this first stage you say that this interpretation of Federal law, as distinguished from Constitutional questions, shall not apply to matters in the concurrent field. I do not understand why you draw that distinction?—I think it would be justified on this ground, that though these are placed in the concurrent field, yet they are not really Federal; they are really Provincial. They are placed in the concurrent field merely to secure uniformity of legislation. The second reason is that were you to extend jurisdiction over the whole of the concurrent field, then you would bring at once into the Federal Court all questions relating to the interpretation of our great codes like the Criminal Procedure Code, the Indian Penal Code, the Civil Procedure Code, and the like, and the work of the Federal Court would be immediately extended to a degree that was not contemplated in

the first instance. The effect might be to all intents and purposes giving the Federal Court at once a very large share of the functions which would fall on the Supreme Court if it were constituted.

*Earl Peel.*

13,918. Under those circumstances you might be getting different decisions on the same point in different Provincial High Courts on one of these Federal laws in the concurrent field?—That might be the case. It is, I am afraid, the case at present, that in the interpretation of some of our codes, such as the Civil Procedure Code, and the interpretation of some of our Acts which would fall into that concurrent field (the Limitation Act and the like, and the Law of Evidence) you do have differences of interpretation between the High Courts at present.

*Marquess of Salisbury.*

13,919. But, Sir Malcolm, you will observe, will you not, that in respect of Lord Peel's point, your Memorandum, is different from the White Paper, because, under the White Paper, the Supreme Court would have had cognisance of these issues, and therefore there would have been a co-ordination of the judgments of the various High Courts, but under the change by the exception of the concurrent field, you are withdrawing all the issues which arise in the concurrent field from any power of co-ordination by the Appeal Court, and so there is a difference between the two systems?—No; if I may say so, there is not really a difference, because, under the White Paper, there was an enabling provision to make a Supreme Court. Under the Proposals now put forward in the Secretary of State's Memorandum, there is still that enabling provision. Therefore, in either case, the question of obtaining identity of judgment in regard to these questions in the concurrent field, and in Provincial Legislation, would depend upon your exercising that enabling provision.

13,920. Do you mean that there may be, after the Secretary of State's Memorandum, still a Supreme Court?—Certainly, yes. (*Sir Samuel Hoare.*) I do not think Lord Salisbury realises that in

both cases, all that we do is to give powers for bringing either a Supreme Court into being, or a side of the Federal Court that would do the Supreme Court work. In both cases, both in my Memorandum and in the White Paper, that power is an enabling power. We do not propose under the White Paper here and now to bring the Supreme Court into being. It is an enabling power that we propose.

13,921. So that what your answer amounts to, Secretary of State, is that there was no certainty under the White Paper of co-ordination in these particular classes of judgments and there is no certainty still?—This is only the case of the Provincial field where there is uniformity of legislation. The problem of the States does not enter into it.

13,922. No?—There is already the appeal to the Privy Council as the co-ordinating sanction.

*Dr. B. R. Ambedkar.*

13,923. Might I ask one question on that point? As I understand it in the concurrent field there will be an appeal to the Privy Council from the decisions of the High Court?—Yes.

13,924. What I do not understand is this, if there can be an appeal to the Privy Council in an issue arising out of an interpretation of the concurrent law in the concurrent field, what difficulty can there be in allowing such an appeal to the Federal Court?—One of our reasons anyhow is that we do not want to flood the Federal Court with an enormous amount of work and the demand for a very large number of Judges at the beginning.

*Mr. Zafrulla Khan.*

13,925. May I put one question on this point? Secretary of State, do I understand that the chief difference between the proposals in the White Paper and the proposals in the Memorandum is this: The White Paper proposes that simultaneously with the bringing into force of the New Constitution there shall be established a Federal Court, which generally speaking, shall take cognisance of matters described in Proposal 155, and also hear appeals whether in the form of appeals or special references from

the High Court in matters involving (I mean speaking generally) the interpretation of the Constitution?—Yes.

13,926. And this is supplemented by a proposal that power shall be given to the New Federal Legislature when the proper time arrives for them to set up a Supreme Court for British India to hear appeals in all other matters subject to such limitations as regards their jurisdiction, and so on, as are prescribed in the White Paper. That is generally the White Paper Proposal. Your Memorandum modifies it to this extent (i) That the jurisdiction of this Federal Court which is to be immediately set up should be extended to this extent that, in addition to the matters which are described in the White Paper, over which it would have jurisdiction, it should also have jurisdiction to hear appeals arising out of the interpretation of Federal laws, whether for the moment you define them as laws relating to matters in List I, or whether you define them as relating to matters in List I and III?—We define them as relating to matters in List I.

13,927. I am not on that point for the moment. The first change is that the jurisdiction of this Federal Court which is to be immediately set up shall be to that extent extended?—Yes. (Sir Malcolm Hailey.) Yes.

13,928. Then you say that with regard to the rest of the field, after you have transferred from the remaining field into this Federal Court field these matters of Federal laws, in the remaining field, your original proposal, as in the White Paper, continues, that a Supreme Court may be set up by the Federal Legislature. But you suggest that that Supreme Court shall not be set up as a separate Court but shall be only the other side, the second division, as it were, the Supreme Court division of the Federal Court?—(Sir Samuel Hoare.) That is so.

13,929. The main difference, therefore, is that whereas appeals on questions of interpretation of Federal laws under the White Paper Proposals would not have gone to the Federal Court, but would only have gone to the Supreme Court if and when it was set up, you propose that these appeals shall go immediately

to the Federal Court, and with regard to appeals with regard to the remainder of the field, the position shall continue as is set out in the White Paper generally?—That is so.

The Lord Chancellor.

13,930. May I ask a question? Would you be good enough to look at paragraph 2 of the Memorandum that was circulated last night?—Yes.

13,931. I only want to read the first sentence: "The procedure contemplated by these proposals is, therefore, that a person who desires to appeal from the decision on a Constitutional issue of the High Court of a Province or a State will ask that Court to state a special case for the decision of the Federal Court." That question I want to ask is this: We are all agreed that what we want to get at is the meaning of "a Constitutional issue." I quite understand that you can define a Constitutional issue by saying that it is any issue which arises out of any Act in the First List?—No, it is any case arising out of the Constitution Act.

13,932. I see. Now, what one wants to know is this: Supposing you get some case in a Provincial Court which raises a Constitutional issue, are there certain circumstances under which that case cannot go to the Supreme Court branch of the Federal Court?—I would say No. When an issue was raised in another Court raising an issue under the Constitution Act then that case would go to the Federal Court.

13,933. You do not use the words "Constitution Act", you use the words "Constitutional issue", and there may be Constitutional issues arising out of all those three cases?—Generally speaking, we mean the Constitution Act here.

13,934. Then, I understand that in every case which arises out of something in the Constitution Act there will be an appeal to the Supreme Court side of the Federal Court?—No, the Federal side.

13,935. Then, I do not quite follow those cases to which you refer which raise Constitutional issues, and yet there is no appeal from the Provincial High Court?—I do not see what cases those would be. All Constitutional cases

would have to go on appeal to the Federal Court; all cases arising out of the Constitution Act.

Marquess of *Reading*.

13,936. Would not a Constitutional issue be an issue which arises as to the interpretation of some passage or part of the Constitution Act?—Yes; that is what I mean.

13,937. Then you go on afterwards to deal with a change in the Federal laws which is a totally different thing. That is dealing with the laws which come under the particular schedule which are the Federal subjects?—Yes, that is so.

13,938. That is quite a new thing and a different matter. But your original plan is maintained to this extent, that the Federal Court is to be the Court to which appeals will come, or which will have an original jurisdiction in all questions of issue, that is of controversy arising with regard to the interpretation of any part of the Act conferring the Constitution?—Yes.

Sir *Akbar Hydari*.

13,939. Am I right in understanding the position? Would the Supreme Court side when established hear appeals raised on strictly Federal laws, that is All-India laws, and would there be appeals heard by that Supreme Court side both from judgments of British India as well as State Courts, or is it your intention that even after the Supreme Court side has been established, all cases dealing with Federal law strictly so-called, that is in List I, should go before the Federal side of the Court?—Yes. We are contemplating the interpretation of the Federal law as going to the Federal side. We are not contemplating—I hope my advisers will correct me if I am wrong; this is a very technical affair—that States' questions should go to the Supreme Court side of the Federal Court?—(Sir *Malcolm Hailey*.) That is so.

13,940. Even with regard to cases arising out of List I in which States have federated?—(Sir *Samuel Hoare*.) The List I cases would go to the Federal Court, and not the Supreme Court side of it. (Sir *Malcolm Hailey*.) If Sir Akbar would kindly look at the List, he will see that the concurrent field of

legislation, List III, and the Provincial laws with which the Supreme Court side of the Federal Court would deal, neither of them affect the States; they are purely British India. Therefore, the Supreme Court side of the Federal Court would deal only with British India Acts.

13,941. Would the Supreme Court side deal with appeals from British Indian Courts on cases relating to List I?—No; that would be the Federal Court.

13,942. Those also would go to the Federal side?—Yes.

Marquess of *Salisbury*.

13,943. Supposing an ordinary litigant in a State raises a question of a Federal law which applies to the State (because under the Instrument of Accession, there may be such laws) and he is unsuccessful and desires to appeal; to what Court would he appeal?—(Sir *Samuel Hoare*.) To the Federal Court acting in its Federal capacity.

Sir *Manubhai N. Mehta*.

13,944. If there is a constitutional issue involved then the jurisdiction, as you said, would be in the Federal Court on its Federal side?—Yes.

13,945. Also will the party have the option to go to the Provincial Court or to the State Court, because we have also given the Federal Court appellate jurisdiction in such matters, so where will the venue be in the first instance? Will it be to the Federal Court in its original jurisdiction or, as I understand it, would it be this? Where the party concerned is a constitutional unit then he must go to the Federal Court, but if he is a private citizen he has the option to go to the Court of his own Province and then go to the Federal Court by way of an appeal. I wanted that to be clear?—(Sir *Malcolm Hailey*.) No. If you would look at paragraph 155, the original jurisdiction is between the federation and a province or a state; or between two provinces or two states; or secondly any matter involving the interpretation of, or arising under any agreement entered into after the commencement of the Constitutional Act between the Federation and a Province or State. Those would be what might very roughly be described as State issues. A private litigant would go to



his own Court first of all whether he lived in a State or in a Province.

13,946. That is what I understood?—And if he were dissatisfied with the decision of his own court, then the matter would not lie within the original jurisdiction but within the appellate jurisdiction of the Federal Court.

*Mr. M. R. Jayaker.*

13,947. May I ask a question as regards the words "constitutional issue"? Will you kindly turn to paragraph 114 of the White Paper, the last part thereof, "In the event of a conflict between a Federal Law and a Provincial Law in the concurrent field, the Federal Law will prevail." I suppose there will be an analogous provision the Constitution Act bringing in this provision under paragraph 114?—(Sir *Samuel Hoare.*) Yes.

13,948. Supposing that question arises which is embodied in the last part of this section which says, "In the event of a conflict between a Federal Law and a Provincial Law on the concurrent field, the Federal Law will prevail," that would be as regards the interpretation of a certain section of the Constitution Act, as Lord Reading interpreted the words "constitutional issue"?—Yes.

13,949. Therefore it will be a constitutional issue in that sense?—Yes.

13,950. Yet the question will arise in the concurrent field?—Yes. It would go to the Federal Court.

13,951. Although it arises in the concurrent field?—Yes. I think Mr. Jayaker is not distinguishing entirely between the settlement of a dispute arising out of the Constitution Act and the settlement of a dispute arising out of the interpretation of a law in the concurrent field. In the former case it would go to the Federal Court.

13,952. What I fail to understand is that in your memorandum you are willing to give an extended jurisdiction to the Federal Court from the one which is mentioned in the White Paper, in all cases where Federal Laws have to be interpreted, provided the Federal Law arises in List No. 1?—Yes.

13,953. And that, you say, is because you want some authority to co-ordinate different interpretations which may be

placed by different courts in the States and in the Provinces?—Yes.

13,954. How is the necessity for such co-ordination less in the case of laws which are common to British India in the concurrent field and whose distinguishing feature is only this that the States do not come in?—But that is a very big distinguishing feature, it seems to me.

13,955. How are you going to co-ordinate all those Laws?—By the Privy Council until you get the supreme court side in being.

13,956. I thought you were going to create a court intermediate between the Privy Council and the Indian Courts?—Yes, exactly, but I was not sure whether Mr. Jayaker meant at once or whether he meant when this second bench of the Federal Court is in being.

*Mr. M. R. Jayaker.*] No the Federal Court is going to be an intermediate court between Indian courts—I am using the word "Indian" because Provinces and States come in—and the Privy Council. If so, why deprive the court of the power of co-ordinating the interpretation of federal laws in the concurrent field? Why drop it out altogether and refer it to the Privy Council direct?

*Marquess of Reading.*

13,957. He has given the reason for that; it would multiply appeals so much?—(Sir *Malcolm Hailey.*) I think the Secretary of State has already given the answer to that. We do not wish to flood the Federal Court with a large number of references in the first instance but we do provide that ultimately, if the legislature so decides, it can bring the whole of the concurrent field as well as the Provincial field within the sphere of Federal Court decisions and, therefore, the Federal Court to that extent would be, as Mr. Jayaker said, an intermediate court for other purposes between the Indian Courts and the Privy Council, but that is a secondary stage which should be taken at the option of the Indian legislature when they find it to be necessary and also find that they could justify the expense.

*Mr. M. R. Jayaker.*

13,958. That cannot happen for several years and during that period in all these

questions the Indian litigant will have to undertake the expense of coming to the Privy Council while all the time there is a Court sitting in Delhi or elsewhere which is capable of deciding these questions?—That may be the case but the Indian litigant would be under no disadvantage under which he has not laboured for many years past and the immediate constitution of a Federal Court on the lines indicated by Mr. Jayaker would undoubtedly place at once a very heavy expenditure on the Federation. It would also to some extent alter the character of the Federal Court merely by the extension in its size, and on account of the very great attention that would have to be paid to purely British Indian cases, cases which now for the most part stay with the High Courts or only occasionally go to the Privy Council—considerations therefore not constitutional but largely practical. Do you wish at the outset to flood your court with all these appeals and can you afford the extra judges required to try them? The proposal set forth in the Secretary of State's Memorandum is merely to leave the decision of that question to the option of the Indian Legislature at some future date.

Earl Peel.

13,959. You use the phrase "flooding the court with these cases". Is that not rather a liberal phrase, because we were told; were we not, at an earlier stage that really these concurrent laws would be very few and they would only arise as a method as it were, of putting a seal upon a sort of agreement between the Provinces that they wanted legislation of a particular character. Surely there would be very few of them and is not the question of flooding the courts with appeals in these cases rather a strong statement?—They deal with the whole of our major codes and they would therefore, in effect, afford a means of appeal to the Federal Court against a large number of important decisions of the High Courts and I think there would be a very general agreement that whereas you could look forward to some restriction in the cases which would come before the Federal Court on its constitutional side and its purely Federal side, yet I think that all lawyers here at all events

would agree that the immediate extension of the powers of the Federal Court to try, on appeal, cases in the concurrent field from provincial courts would undoubtedly lead to a volume of litigation far in excess of that which would be involved in the two original powers, the constitutional and the purely Federal powers.

13,960. May I ask one other question on that point? I think it is admitted that there is a great deal of opinion against having two courts, a Federal Court and a Supreme Court. Is not this almost forcing forward the question of a Supreme Court too much, because if these cases are exempted from coming before the Federal Court, with the obvious difficulties that arise in having different sets of interpretation and all the trouble of an appeal to the Privy Council, is it not likely that that will force forward the enabling powers to set up a Supreme Court? It is almost forcing it to be put into action as soon as possible, is it not?—(Sir Samuel Hoare.) I do not know whether that is so or not. My own view is that there will be a necessity for a Court of some kind to do the kind of work that we contemplate for the Supreme Court, and that unless there is a body of that kind the Federal Court in its Federal sense will be swamped. Our proposal differs from the White Paper proposal only in this respect, that we keep the two branches together instead of having them separate. All the evidence I have heard on the subject goes to show that having them separate which was a conception that was very much urged in some of our former discussions, would almost inevitably lead to constant disputes between these Courts. Our proposal is intended to keep the two together. Whether in the form that we have made it now it is more likely to bring into being the Supreme side of the Federal Court or not, I cannot say; I do not see why it should. I think on the whole it is less likely to.

Marquess of Salisbury.

13,961. I confess I was afraid, when I was trying to put my questions, that the Memorandum involved a certain limitation on the right of appeal as compared with the White Paper, but I gather that

the Secretary of State says that that is not so?—That is not so.

13,962. I do not know whether it is not a great impertinence in me to make a suggestion, but I am not sure how far other members of the Committee are as little clear as to the final result as I am. If, however, there is any ambiguity, I wonder whether the Secretary of State will consider making a graph, like a pedigree, showing how the appeals lie from the various Courts in a graphic form, so that we might have it before the Committee, putting the High Courts, the State Courts, and then leading on to the Supreme Court or the Federal Court, as the case may be, or to the Privy Council, and showing how the appeals will lie?—Yes, I think I could do that.

Marquess of *Reading*.] The only difficulty is that it is not so much a question of showing the Courts as showing the subjects that come before the Courts.

Marquess of *Salisbury*.] You would have to add a little letterpress as well.

Marquess of *Reading*.] Yes. That is where your difficulty comes. You are not changing anything otherwise except that you are instituting for the first time something in the nature of a Supreme Court on what I may call Federal questions, meaning by that Constitutional questions and the interpretation of Federal law. That is all you are proposing to do, I understand, but you add to it a power which at present is only a power to the Legislature if it chooses to extend that, and it may extend it to the furthest degree of making the Federal Court the Supreme Court for all-India, so that all appeals would be able to proceed from a High Court to that Supreme Court. That is something which you are only giving the power to do in this White Paper and Memorandum, but you are not now, as I understand, seeking to establish anything more than this Federal Court, and the Federal Court deals with particular subjects. It is not so much the Courts from which the appeals come; it has an original jurisdiction which is exclusive and then it has a jurisdiction in appeal. The jurisdiction in appeal presumably would be the same as if it came to a Supreme Court. But I think, if I may say so. I follow what is in Lord Salisbury's mind; in order to make it

clear you would have to have some letterpress explaining the limitations of the subjects.

Marquess of *Salisbury*.

13,963. I have made the suggestion. The Secretary of State will consider whether it is a possible one?—Yes; and in the meanwhile let Lord Salisbury be generally reassured that there is no restriction of appeal at all in our proposals.

13,964. Before I finish my task, may I just take the Secretary of State to two other matters? In the first place, there are some phrases in the Memorandum saying that the Federal Court is to have no power to enforce its decisions. In paragraph 4 the Memorandum says: "In this connexion I should like to make it clear that it is not intended by paragraph 160 that the Federal Court should possess any power of Federal execution, either in British India or in the States. It will pronounce judgment on matters which come before it, but those judgments will be carried out and made effective through the agency of the Courts from which the matter before it came." Is that different from the practice in this country?—No, I am told that that is the practice of the Privy Council.

Marquess of *Reading*.

13,965. That is quite right; that is the practice in the House of Lords and in the Privy Council?—We have modelled it upon the practice here.

Marquess of *Salisbury*.

13,966. The phrases are that they are able to give a binding decision but they are not to have any executive power?—I understand what happens, speaking as a layman, is that the Privy Council or the House of Lords give a decision and the subordinate Courts have to carry it out.

Marquess of *Reading*.

13,967. The House of Lords and the Privy Council would not have the machinery to put into execution all that. It is the ordinary course. The House of Lords would pronounce a decision; that is put into operation by the other Courts

by the executive powers and the officers which they have for that purpose. As I understand, it is exactly that scheme which you have in mind?—Yes.

Lord *Rankeillour*.

13,968. Is that so in the United States with the Supreme Court, do you know?—I could not say offhand. I am not sure. Anyhow we have based it here upon our own procedure.

Lord *Chancellor*.] Yes, it is our own procedure, and if you look at Section 16, on page 78 it bears out what the Secretary of State says.

Lord *Rankeillour*.] But we are not a Federation, and India and America are.

Lord *Eustace Percy*.] I think I can answer the question about America. The Supreme Court has no executive power; it executes either through the Federal Court in the States or through the State Court, according as the appeal has come from the Federal Court or the State Court.

Marquess of *Reading*.] It is just the same as in this country.

Lord *Eustace Percy*.] Yes, except that they have got Federal Courts. Of course, it will not be the case in India.

Marquess of *Salisbury*.

13,969. There is only one other question which we have avoided up to now, namely, an appeal in criminal cases. I understand the suggestion of the Secretary of State is to set up a Court of Criminal Appeal?—We leave it to the discretion of the Indian Legislature.

13,970. I should have said that, yes. But until the Indian Legislature exercises that right, what will be the position as to criminal appeal?—(Sir *Malcolm Hailey*.) The position will be exactly the same as it is at present, in which the appeals do not go as appeals beyond the High Court, though there is a reference to the Privy Council, and that would remain in exactly the same position as it is at present.

13,971. Then one last question on this: If the new Legislature do set up a Court of Criminal Appeal, will there be special judges for it or will judges be told off for it, as is done in England?—(Sir

*Samuel Hoare*.) I do not know about that.

13,972. It is only a question of expense?—(Sir *Malcolm Hailey*.) It would be necessary to have special judges, because the Court would have to sit in some centre at which judges would not be available from their ordinary work. Undoubtedly if you have a Court of Criminal Appeal in India there would be a very large number of cases indeed coming before it, and you would have to have a separate Court with separate judges for the purpose. (Sir *Samuel Hoare*.) You see, Lord *Salisbury*, the position depends a good deal upon the number of cases; for instance, if you take murder cases I am told that in a certain Province last year there were five hundred.

13,973. Five hundred murders?—Yes; I will not specify which Province it was.

Marquess of *Reading*.

13,974. Only just one question on the last matter that you were dealing with, Secretary of State, to clear it out of the way. Of course, this question of the criminal jurisdiction again does not arise in relation to the Constitutional enactment of a Federal Court; it does not arise on that at all?—No.

13,975. It only comes under the enabling powers to the Federal Legislature?—Yes.

13,976. Whatever those may be, power is given to the Legislature to decide what kind of Court of Appeal it will have in criminal and other matters, and, of course, they will take into account the question of expense and practical considerations. That is left entirely out of what we have to decide on the Federal Court-question. That is right, is it not?—Yes. What has very much impressed itself upon my mind is the necessity of keeping the criminal cases out of the Federal Court and the Supreme Court. If you once let them in, the Federal Court and the Supreme Court sides will be swamped by them.

13,977. There are only one or two other matters after the long discussion we have had that I want to ask you about. Just one question about paragraph 1 of your Memorandum in order to clear it up. At the top of page 2 you say: "the

Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay." I do not want to discuss the exact form of drafting there, which I think is a little open to criticism, but purely on technical grounds what is intended, I suppose, and if so I leave it at that, is that power should be given to the Court to make rules enabling them to deal themselves with vexatious appeals?—That is so.

13,978. I do not want to discuss the technical language—it is a little difficult exactly as framed—unless you mean that it is to be by rules which the Court will frame?—Yes.

13,979. Then, of course, the Court will by its rules meet all the difficulties that I have in mind, and I need not ask you anything about them. Now I want to put one or two questions to you about the States, because, of course, they do introduce a feature which requires careful consideration and which interests the States. On the constitutional issues no question arises at all, as I understand, and it has been understood from the first that the States would be bound, just as the Provinces and the Federal Government, by any decision on a Constitutional issue. That is right, is it not?—Yes.

13,980. No question has arisen upon that?—No.

13,981. Of course, on the extension of it, which you have now introduced by your Memorandum—that is giving the Federal Court the power and the obligation to interpret Federal laws—the States do become involved?—Yes.

13,982. We shall hear from them what they have to say with regard to it. I only wanted to be clear about this. I am only asking the questions about the interpretation of Federal laws. I leave the Constitutional laws out of question. On the Federal laws, assume that a State in its Supreme Court, whatever it may be in that State, has made a pronouncement of the interpretation on a Federal law; what is proposed now is that a question of that character could be dealt with and should be dealt with if properly brought before it by the

Federal Court? That is involved necessarily, is it not?—Yes.

13,983. Of course, that does involve the assent of the States to it?—Yes.

13,984. Then I presume also from what you have said that the execution of a decree of the Federal Court, assuming that it did involve a State, would be left to the Courts and the executive powers of the State?—Yes.

13,985. It follows from what you have already indicated in your answers to Lord Salisbury. It makes it perfectly plain—and I think it is desirable that the States should understand that—that it is not suggested in any way that there should be officers entering the States for the purpose of enforcing a decree of the Federal Court, but that it would be left to the officers of the State to execute such a decree. That is quite clear, is it?—Yes.

13,986. Therefore the only interest that the State would have or the only possible conflicting interest on the matter is, I suggest, that the Federal Court would have the supreme voice upon not only Constitutional issues but upon the interpretation of the Federal laws, and would if necessary override a decision of a State Court just as it would of a High Court in India. There is no difficulty about that?—No.

13,987. That is, as far as I can see from your Memorandum and thinking about it, the only way in which the States would be involved. What I am suggesting is that really the States would be only affected by this new proposal to the extent that it would mean uniformity as regards not only Constitutional issues but the interpretation of the Federal law?—Yes.

13,988. And not only uniformity but exactly the same position for the State High Court as for the Provincial High Court, and indeed in the case of the High Court of Calcutta which is in a different capacity, exactly the same position would apply, and the Federal decree would be the Supreme decree, which would mean uniformity throughout the State and the Provincial Courts. That is the position, is it not?—Yes.

Marquess of *Salisbury*.

13,989. Lord Reading will allow me, I am sure, just to call attention to the fact that in dealing with that in the Memorandum the Secretary of State uses the preliminary phrase, "As I understand," so that he does not know for certain that that is so. It is in paragraph 3?—I do not wish undue importance to be attached to a phrase of that kind. I do not much mind whether it is in or out. It has not got any sinister intention behind it.

13,990. No; it is only that I want to find the limits of what the Committee are to understand?—Perhaps it would be better if I took it out. It is not meant to imply that. I wish to say no more than that I have never heard any objection urged to this proposal.

*Lord Chancellor.*] I think it is only a technical point as to machinery. Assume for the sake of argument that the Federal Court gives a Judgment which affects a State or which affects a person in a State. In most cases when you are dealing with an outside body what happens then is this, that the State has machinery under which that Judgment can be registered, and when that Judgment of the Supreme or Federal Court is registered in a State, then the State itself enforces the registered Judgment, and in that way the sovereignty of the State is preserved and unanimity also is secured because they agree to the Judgment, but they are the sovereign—the people who enforce the registered Judgment. It is not quite the same in England, because when the House of Lords pronounces a Judgment here, there being no executive machinery, they return it to the King's Bench and the King's Bench enforce it through their executive machinery which you assume (I do not want an answer now) will enforce the registered Judgment.

Marquess of *Reading*.

13,991. Secretary of State, I want just to go back for one moment to clear up, I hope, a matter which has been much discussed this morning. I am referring to paragraph 7 of your Memorandum; that is with respect to matters in the concurrent field. I do

not want to go over the ground again; I only want to put to you as I understand it what the position is. I think I have got it right from what Sir Malcolm said, that is to say that in these matters in the concurrent field are included, of course, everything that is at page 119; that is List III. That is right, is it not?—Yes.

13,992. If you look at List III you will see that it covers an immense field. I am only calling attention to it, because I myself asked a question as to why this was done, and Sir Malcolm gave an answer which at any rate for the moment seemed to me satisfactory. I just wanted to explain why, if you look at it, you see, for example, jurisdiction powers and authority of all Courts, civil procedure—all matters now covered by the Indian Code of Civil Procedure, and a number of other matters—criminal procedure and so forth; I do not want to go right through it. In substance, it covers almost every form of litigation and issue that could come before the High Court. Therefore, as I understood Sir Malcolm in answer to a question put by myself and from the Secretary of State's explanations, the reason why you have excluded the concurrent field here is not on any matter of principle, but because if you were to include it you would be doing the very thing which you are seeking to avoid, that is to say, giving a multiplicity of appeals which would tend to swamp the Federal Court and consequently to make it difficult to get decisions on the Constitutional issues and the Federal laws. That is as I understand it?—Yes. There are really two reasons. The first reason is to keep the Federal Court for cases in which the States and British India are both involved; the States are not involved in the concurrent field. The second reason is the reason just stated by Lord Reading, that we feel that if we brought the concurrent field into the Federal jurisdiction we should swamp the Court.

13,993. But you are doing nothing which would exclude from the Indian Legislature the power, should it desire to exercise it, of extending the right of appeal to all the concurrent field?—Nothing.

13,994. But that depends upon them and whether they are prepared to shoulder the expense and inconvenience of it; that is how it stands?—Yes.

13,995. The answer to me was satisfactory, and I was just anxious to see that one understood it. I think really there is only one other question that I want to put to you with regard to it, and that is on the criminal side. All that is excluded, I understand—not expressly perhaps but nevertheless is intended to be excluded by your proposed legislation constituting the Federal Court?—Yes.

13,996. That is to say, the criminal law does not enter into it at all. What I was rather wondering about that was this. I am not pressing for an answer; I dare say it has already been carefully considered; but you might have, might not you, on a constitutional issue some question which would involve either the Criminal Procedure Code or perhaps the criminal law. It is not impossible, as it seems to me, that such a question could arise. If you do intend to exclude criminal matters from it, would it not, therefore, be necessary to exclude them by your Constitution Act? I am not sure what the intention is, and indeed I do not press for an answer, but it does involve consideration?—(Sir *Malcolm Hailey*.) It is clear that the Constitution Act must provide for the criminal side in the following respects. It must in the first case make it clear that if any question of the interpretation of the Constitutional law arises in respect of criminal law that must go to the Federal Court even though in other ways it has no criminal side, but in the provisions of the Constitution Act also which enable you to constitute a Court of Criminal Appeal it will also be necessary to provide certain limitations as to the extent of those appeals; it will also be necessary to provide for the exclusion after that Court is constituted of the authority of the Privy Council, because the jurisdiction of the Privy Council would be removed if a Court of Criminal Appeal were constituted in India.

Marquess of *Reading*.

13,997. Would it? Why do you say that, Sir *Malcolm*? Why do you say

that the jurisdiction of the Privy Council would be removed? It would only be so if there were an Act of Parliament here that removed it?—I should explain that it is proposed that it should be removed. It is proposed that the appeal to the Court of Criminal Appeal shall take the place of the reference to the Privy Council now, and that would have to be provided in the Constitution Act.

13,998. Are you suggesting that that will be in the Constitution Act?—(Sir *Samuel Hoare*.) It is already in paragraph 167 of the White Paper. (Sir *Malcolm Hailey*.) In paragraph 167 it is already proposed.

13,999. That brings me to the very point I wanted to put to you on paragraph 167?—That is why you will have to make special provision for those points in the Constitution Act itself.

Mr. *M. R. Jayaker*.] On that point about paragraph 167, may I ask the Secretary of State a question on the last two lines: "In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." Is it possible to do away with this right—the prerogative of His Majesty to give leave by special leave to hear an appeal? Is it possible to do away with that?

Marquess of *Reading*.

14,000. Secretary of State, that is just the point that I wanted to put to you. That does involve a very important matter, I suggest to you. Hitherto it has always been the right to appeal to His Majesty by an appeal to His Majesty in the Privy Council, and it has been very much prized. Of course, the exercise of it is very limited, and I do not want to go into that, because, as the Lord Chancellor knows perfectly well, it has been laid down very clearly what would happen on application to the Privy Council for special leave to appeal; but I do suggest to you that although you may say there is to be no direct appeal to the Privy Council because you are putting up an intermediate Court which is the Court of Criminal Appeal, you should not take away the right of appeal to the Privy Council. Limit it as you may think right, but surely there ought

to be some right of appeal or of special leave of appeal; I do not want to go into cases?—(Sir Samuel Hoare.) Lord Reading will no doubt remember from his experience the difficulties that are constantly arising under the present system. Perhaps it would help the Committee if I read to them this short note about the position, because it will bring to their minds the practical difficulties with which every Viceroy and every Secretary of State has been faced for a very long time. The effect of the Proposals in paragraphs 166 and 167 of the White Paper, taking into account the modifications suggested in my Memorandum, circulated yesterday to the Committee, is that (if and when a separate Court of Criminal Appeal is set up in British India under the powers to be given by the Constitution Act): (a) the right of appeal to the King in Council in criminal matters, whether by special leave or otherwise, will be abrogated (paragraph 167, last sentence); but that (b) an appeal will lie as of right to the Indian Court of Criminal Appeal against death sentences or against orders of a High Court reversing an acquittal on a criminal charge; and (c) an appeal will lie to the same Court in other criminal cases if a certificate has been given by the High Court of the Province that the case is a fit one for a further appeal (paragraph 166, last sub-paragraph). The Privy Council has repeatedly pronounced that it is not a Court of Criminal Appeal and that it will grant leave to appeal to itself in criminal matters only (here I quote the actual words of its pronouncement) "if it is shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done". None the less an average of some 30 applications for leave to appeal against capital sentences are lodged every year, and although the applications are almost invariably rejected, the result of an application being filed is that it is, of course, necessary to postpone execution of the sentence and if, as is usually the case, the lapse of time between the filing of the application and its disposal by the Privy Council is considerable, the authorities in India are frequently faced with the necessity in the end of con-

sidering the propriety of commuting the sentence into one of transportation for life owing to reluctance to execute a condemned prisoner who has been awaiting the execution of his sentence for a prolonged period. It has to be remembered that unless a death sentence is imposed by a High Court itself sitting as a Court of Session—which is the case with a very small proportion of the number of death sentences imposed in India—the sentencing Court is that of a Sessions Judge and that every such sentence has to be confirmed by the High Court of the Province before it comes final. The High Court in considering a reference from a Sessions Judge for confirmation of a death sentence necessarily goes into the whole facts of the case, more especially as the accused person almost invariably appeals to the High Court against his sentence, the appeal being heard at the same time as the reference by the Sessions Judge for confirmation. In the event of the sentence being confirmed by the High Court and the accused's appeal being rejected, it is then open to the convict to lodge an application for commutation of his sentence, under Section 401 of the Criminal Procedure Code, first to the local Government, and if that is rejected, to the Governor-General in Council, and the convict in almost every case avails himself of this right. Further than this it is open to the convict to apply to the Governor-General to exercise on his behalf the delegated prerogative power of pardon.

14001. I agree and, as you say quite rightly, I am very familiar with the difficulties that have arisen in that respect, but the point I am putting is not affected really, I think, by that. What I am suggesting to you is that you should not shut out the right of appeal, that is, to the Privy Council for special leave to appeal. You may limit it if you will to particular cases, but by the Provision in the White Paper you shut it out entirely and the passage that the Secretary of State read, I think, only confirms what I am putting. I mean that in a large number of cases, the Judicial Committee refuses it generally on the ground that they will not interfere and they will not listen to discussion on it unless a



miscarriage of justice has arisen it may be from a refusal to consider various matters into which I do not want to go, but out of those thirty cases, some have been granted. As the Secretary of State read almost all have been refused; I quite agree. I could give instances from my own experience at the bar where leave was granted and it is only in those cases that you would get the delay which you have suggested and which does occur, I know. All I am suggesting to you is that you should reserve the right of special leave to appeal to the Privy Council, which is very very rarely exercised by the Court, but nevertheless, it is in the King's power to intervene when there is Petition to him from any person condemned in India, and I very much myself dislike taking away that right for Constitutional reasons. I hope you will consider that?—Certainly we must take careful account of what Lord Reading has just said. The practical difficulty is to find any means of limiting this appeal. As long as there is an appeal, sentence must be suspended during the period of the appeal, and, I think I am right in saying that every Secretary of State and every Viceroy, practically without exception, has found the present state of affairs most unsatisfactory.

14,002. I agree there are difficulties, of course. May I make one suggestion?—The sentences must be suspended on application.

14,003. Certainly?—And it may take quite a long time before the Privy Council gives its decision.

14,004. It may take a month or two, I quite agree, because they may not be sitting, but otherwise they hear them, as I have always understood, rapidly. When they have had an application for special leave to appeal, it has been heard at once?—We have had one or two difficulties within the last year or two arising from this delay.

Marquess of *Reading*.] Will some attempt be made to deal with that, and I would ask the Secretary of State and his advisers to look at the limitations that are placed on the right of appeal nowadays from the Court of Criminal Appeal in this country. When we established the Court of Criminal Appeal in this country, presided over by the Lord

Chief Justice and other judges of the King's Bench Division, its decision was final and there is no appeal unless it is certified that there is a question of law which has arisen which is of general interest, and only on the Attorney-General's certificate it can go and has gone to the House of Lords. That is a very limited right of appeal, I agree. Generally speaking, the Court of Criminal Appeal's decision is final. I beg that attention should be given to this, that in some form or other we should not shut out from the Indian subjects whatever Courts we may be instituting this right of appeal to the King.

Lord *Eustace Percy*.] May I just ask Lord Reading this: Surely, as I understand Lord Reading's argument, it is of the essence of the Constitutional point that the King's right to intervene should be unlimited.

Marquess of *Reading*.] That is what strikes me.

Lord *Eustace Percy*.] Then you cannot apply to that right any limited matters that you apply already to the Court of Criminal Appeal.

Marquess of *Reading*.

14,005. You do. It is not an unlimited right because it is exercised in certain ways in which certain of us who practise are familiar and is undoubtedly limited. There may be an appeal to the Judicial Committee of the Privy Council which is the way in which it is dealt with, and, as the Secretary of State has said, in almost every case, the appeal is refused because the Judicial Committee thinks there is no reason to grant it, but where they think there is they do grant it, and, in that way, you do preserve the right of the subject, and that is what I am anxious to protect?—Of course, we would look with great attention into any point which Lord Reading makes upon a point of this kind. The difficulty, which we have not ignored, is to find a means of limiting this appeal within the kind of limits that he has just suggested.

Sir *Phiroze Sethna*.

14,006. Is not this right of appeal continued to the Canadian subject, although there is a Supreme Court there?—I do

not know about Canada. In Australia the appeal is barred unless the High Court gives its certificate.

Mr. M. R. Jayaker.

14,007. What I want the Secretary of State to consider, with his Constitutional advisers is a point somewhat different from the one Lord Reading raised. 'It being part of the Royal Prerogative, can you take away the right by legislation? That is what I ask the Secretary of State to consider with his advisers. Apart from the expediency of maintaining some contact between the Indian litigant and the King in England, do not you think it is desirable that this right of contact between the litigant in India and His Majesty, the King, in England, should be maintained?—I would like to look into the difficult question of prerogative. It is clear that changes can be made in the manner in which the prerogative is exercised from the Australian experience, where the High Court apparently controls the cases that may go to the Privy Council.

Marquess of Reading.

14,008. I am not sure if you will just look at your words that you do (I rather think that you do not) interfere with the prerogative because in paragraph 167 the words in question are "in criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." That does not interfere with the prerogative?—No, it does not.

14,009. Prerogative is a much bigger question altogether. It does not touch that, but it does touch the points which I am putting to you which are one away in which the King may choose to exercise his prerogative by referring to the Judicial Committee of the Privy Council?—I am reminded that there have, as a matter of fact, been perhaps two or three cases during the last thirty years, in which the Privy Council have given a decision against the decision of the High Courts.

Earl of Lytton.

14,010. And there has been great abuse of the privilege in almost every year?—Constantly.

Marquess of Reading.] You mean the appeals?

Earl of Lytton.] In appeals.

Sir Austen Chamberlain.

14,011. Is it not the case that the Privy Council itself has repeatedly commented upon the number of appeals which never ought to have come before it, and has made representations that the practice of appealing in this, shall I call it, reckless way, really amounts in many cases to denial of justice to the litigant?—We have constantly had complaints of this kind.

Sir Austen Chamberlain.] I only want to put that as the other side of the picture, because it was very much impressed upon me even in the couple of years that I was Secretary of State.

Marquess of Reading.

14,012. These are all cases which arise, are they not, on the special leave to appeal?—Yes; the Privy Council has constantly protested against the present arrangement, and it has constantly stated the fact that it is not a Court of Criminal Appeal.

14,013. That is why I suggested to you that you might look at our law for the purpose of seeing how far you should limit it?—Yes, always remembering the great practical difficulty of dealing with a very large number of cases, running into many hundreds a year, it may be, and with the necessary delay of bringing a case from India here.

14,014. If you will forgive me putting it, Secretary of State, you would not have hundreds of cases a year applying for special leave to appeal to the Privy Council?—I am perfectly willing to look into the point. So far we have found great difficulty in making a limitation.

Marquess of Reading.] I think you said just now you thought there were thirty in one year.

Sir Hari Singh Gour.] May I draw your attention to the present state of the law in Section 84 (1) (a) which lays down "A law made by any authority, in British India shall not be deemed invalid solely on account of any one or more of the following reasons (a) in a case of an Act of the Indian Legislature

or a Local Legislature, because it affects the prerogative of the Crown." We have at the present moment authority in the Government of India Act which entitles the Indian Legislature to make a law though it may affect the prerogative of the Crown.

Mr. *Zafrulla Khan*.] Surely in this case that possibility does not arise because whatever view is finally taken the Act will be passed by Parliament.

Sir *Hari Singh Gour*.

14,015. *A fortiori*?—I always hesitate to give an answer on the spur of the moment about anything that affects the prerogative one way or the other.

Sir *Hubert Carr*.

14,016. The Indians attach very great importance to the right of appeal to the Privy Council in criminal cases and they did put it before the Committee in giving evidence. It is on the file so I will not bother by referring to it now but it is a right that they feel very deeply about although it is one which they very rarely exercise?—I will certainly look into the question again after the discussion we have had this morning.

Marquess of *Zetland*.

14,017. Secretary of State, arising out of the questions asked by Mr. Jayaker, I understand that it is your intention that the question of the possible establishment of a Supreme Court side of the Federal Court shall be left to the determination of the future Federal Legislature in India. Is that so?—Yes.

14,018. In other words, you are prepared to give to India in this matter a greater measure of self-determination than apparently Mr. Jayaker is anxious to accept?—That may be so.

14,019. With regard to what you said as to the two reasons for excluding Acts in the concurrent field of legislation from the appellate jurisdiction of the Federal Court, I quite appreciate the first reason which you gave—as a matter of fact, I think you gave it second—namely, that you might absolutely overwhelm the Federal Court with work from the start; but I also understood you to say that

one reason for excluding such legislation from the appellate jurisdiction of the Federal Court was that it was desirable to restrict that jurisdiction to matters in which the Provinces of British India and the Indian States were jointly concerned. Was that so?—In which the Federation as a whole were concerned—I would rather put it that way.

14,020. Is not that the same thing?—I think it is rather wider. I thought you restricted your question to the cases in which the Provinces were involved. I would rather put it wider.

14,021. Those matters in which the Provinces of British India and the Indian States were jointly concerned?—Yes.

14,022. I understood that to be your reason?—Yes.

14,023. But you have not overlooked the fact that List I has been definitely divided into two parts?—Yes.

14,024. One part of it including matters which are really restricted to the Provinces of British India. But you are not suggesting that in those matters there should not be an appeal to the Federal Court, are you?—In which matters? I do not quite follow Lord Zetland's question.

14,025. You are not overlooking the fact that in List I of the subjects, there is a division in two parts?—Yes.

14,026. Namely, Items No. 1 down to No. 48, which are matters which are the concern of British India and of the Indian States?—Yes.

14,027. And Nos. 49 to 64 are the concern of the Provinces of British India only?—Yes.

14,028. You are not suggesting, are you, that matters arising under those heads, namely, items Nos. 49 to 64, should be excluded from the appellate jurisdiction of the Federal Court?—No; I am not.

14,029. I was not quite clear?—They are, you will see, all of them potential Federal subjects to which the States may accede in the future even if they do not accede at the beginning.

14,030. There is only one other question for information. I understand that

no decision by the Governor-General or by a Governor of a Province taken at his discretion, would be challengeable in any Indian Court. Would it be?—It could only be challengeable upon the ground that it was outside the Constitution, that in the Constitution Act there was no provision enabling him to give a decision. Is not that so, Sir Malcolm? (Sir *Malcolm Hailey*.) The act of the Governor-General taken in his discretion would be expressed as an act of his Government and it could only be challenged in the Court if an act of the Government in itself could be so challenged as lying beyond the law. The fact that it was taken by the Governor or the Governor-General under his special responsibility or his special discretion would not alter its character as an act of the Government itself and it could only be judged, therefore, as an act of Government.

14,031. In which court would proceedings be taken in a case of that kind?—In the court which had jurisdiction over that particular class of act.

14,032. The High Court in the case of a Province?—Yes; I mean it would be challenged on the ground that such-and-such a law did not apply to the act of Government, and if the cause of action arose within the Province then it would come before the courts of the Province.

14,033. And that, of course, would be appealable to the Federal Court?—It would be appealable just as a case against any person would be appealable as an evasion of the law.

14,034. Then only one other question. I assume that no action by the Viceroy, as distinct from the Governor-General, in his relations with the native States, would be challengeable in an Indian court?—Within the sphere of paramountcy?

14,035. Yes?—No, not unless he broke a law in doing so.

Lord *Rankeillour*.

14,036. Secretary of State, do not you recall that early last year, or possibly late in 1931, a capital conviction was quashed by the Privy Council with very severe reflections upon the convicting

court?—(Sir *Samuel Hoare*.) Yes; there was a case.

Sir *Hari Singh Gour*.

14,037. The Patna High Court?—Yes.

Lord *Rankeillour*.

14,038. Then might I ask this about procedure: As I understand it (and, of course, I am speaking only as a layman) a litigant coming to the Federal Court must plead a constitutional issue?—Yes.

14,039. No question of fact will arise to be determined by the Federal Court?—(Sir *Malcolm Hailey*.) If it were a constitutional issue under paragraph 155 as between a Province and a State, then the Court would go into questions of fact; that is because it has original jurisdiction.

14,040. But not by way of appeal?—In the appellate jurisdiction it would be an appeal on a point of law.

14,041. And that limitation is safeguarded by the necessity of stating a Special Case?—Yes.

14,042. Now supposing the Supreme Court side, as it has been called, of the Federal Court were set up and a case comes up in which a constitutional issue has not been pleaded to the Supreme Court side of the Federal Court, could an amended plea be entered there in view of fresh investigation or through the ingenuity of counsel, that in fact a constitutional issue was involved?—(Sir *Samuel Hoare*.) Yes, and it would be open to the Federal side of the Court to withdraw it to the Federal side of the Court.

14,043. In other words, the Federal side of the Court might compel the Supreme side to refer the constitutional issue which then emerged to itself?—Yes, that is so, and no doubt cases of that kind would be provided for under the rules of the Court.

Marquess of *Reading*.

14,044. It would be only one court, would it not?—It would only be one court.

14,045. It would always be the Federal Court?—It would be the Federal Court withdrawing a case from one side of itself to the other.

Lord Rankeillour.

14,046. What in practice will happen if counsel suddenly pleaded a constitutional issue—would the jurisdiction of the Supreme Court side be ousted from that moment until it had been decided by the other side?—It would depend upon the rules of the Court.

14,047. And the rules of the Court might provide that it could first be argued in the Supreme Court side with an appeal to the other side?—It might be argued, I suppose (I am speaking as a layman) that as soon as the issue was raised an issue would be taken to the Federal side of the Court rather than to the Supreme side of the Court.

14,048. It is an obvious difficulty that will have to be provided for?—I would put it this way to Lord Rankeillour, that if there is a difficulty it is much less a difficulty having it dealt with by two branches of one court than by having two quite separate courts, namely, a Federal Court and the Supreme Court.

Marquess of Reading.

14,049. I was just going to put it to you that a good deal of conclusion has been caused by talking of the Federal Court and the Supreme side of the Federal Court. It is one Court. The Judges who will be appointed will be, I understand, Judges of the Federal Court, and I suggest that no difficulty would arise because if a question comes up it would have to be dealt with by the Federal Court. You would not have to refer it to another Court for that purpose?—That is so.

Marquess of Reading.] They would all be Judges of the Federal Court as happens, of course, now. In the Judicial Committee of the Privy Council they may be sitting in two different bodies and taking two different sets of appeals, but it is the same Court.

Lord Rankeillour.

14,050. Would not it be better to find some other name than the Supreme Court side of the Federal Court?—I think it would very likely. I am not using a term of art at all.

14,051. Then may I ask another thing. What provision will there be, and here

I speak as a very ignorant layman, for some kind of interim proceedings. Supposing under paragraph 155 a State pleaded that the authorities in some Province were exceeding their rights or were acting *ultra vires*, could they go to the Federal Court and obtain an interim injunction?—I would like to think about a question of that kind. I am not sure that I appreciate fully what might be its bearings.

14,052. I will give an example. Supposing the police of a Province interfered with a passage of arms into a State, or something like that—that being a Federal matter and a grievance was experienced on that account in the State, could they then go and obtain an interim injunction restraining that proceeding until the matter had been decided?—(Sir Malcolm Hailey.) It would be exceedingly difficult to do that because we envisage that under paragraph 155, in pursuance of its original jurisdiction in these what I may describe as State matters, the Federal Court would only give a binding decision: that decision would have to be binding, for instance, on a State or a Provincial unit concerned. It would be assumed that as soon as a decision was arrived at the State would bind itself to carry it out as a State. Great difficulty would arise if the Court were given a power to take executive action by way of injunction against any particular State or Department of State.

14,053. I am thinking the other way about. I am thinking of a State being the aggrieved party?—(Sir Samuel Hoare.) In either case the difficulty would be the same, I think. (Sir Malcolm Hailey.) It would be difficult to give a power to intervene where a Province was concerned by way of injunction procedure and not where a State was concerned; and there was a difficulty quite frankly as we saw it. It may be possible to devise some form of procedure by which injunction should be given effect to, but just at the moment, to be quite frank, we have not seen how that could be done.

14,054. Whoever was concerned in a matter of that sort could go to the High Court of a Province for an interim injunction?—They could not go to a High

Court of a Province in any matter with which Paragraph 155 deals, but there you have the exclusive jurisdiction of the Federal Court.

14,055. But in some other case?—That is always open to them now.

14,056. And that could stay the operation of the matter complained of until there was a decision?—Yes; the State has the right of going to the High Court of a Province now to ask that action should be taken under the law of the Province itself.

14,057. Otherwise, until the constitutional point had been decided and the High Court refused to grant the injunction, there would be no possibility of staying the proceedings until the issue had been decided?—No; otherwise there would be no possibility of doing it.

14,058. Then with regard to paragraph 156, it reads a little ambiguously. At first sight it might be thought to be contrary to paragraph 158. The words, "No appeal will lie under this provision" mean no appeal to the Federal Court; they do not mean no appeal from the Federal Court. That is right, is it not?—(Sir *Samuel Hoare*.) Yes.

14,059. Then there is just one other question about machinery. The question was raised as to the execution of judgments of the Federal Court. That would depend, I think you said, on the Court in which the action originally started?—(Sir *Malcolm Hailey*.) Yes.

14,060. In the case of something coming from the High Court of the Province the machinery would be that of the Provincial High Court for execution?—Yes.

14,061. In cases where Federal Officers were involved would they come in at all in matters of Customs and Excise?—They might do so, certainly, yes.

14,062. But in other cases it would be the purely Provincial machinery?—Yes.

14,063. If that be so would that be subject to the directions which we have already discussed under paragraph 125? Supposing any complaint of delay or of imperfect execution were made, would the Governor-General be able to give directions for execution under paragraph 125?—It is not contemplated that the

Governor-General would be able to give any directions as regards the manner in which a purely judicial High Court decree should be executed.

14,064. The sort of case I contemplate is that judgment is given in the Federal Court, it is registered in the Provincial High Court for execution, a complaint arises that the execution is unduly delayed or is imperfect: under those circumstances would it be the duty, or within the power, of the Governor-General to give directions that that judgment should be forthwith executed?—The power of the Governor-General is limited in paragraph 126 to certain classes of cases.

14,065. I am talking of paragraph 125?—That refers to the authority of the Federal Government.

14,066. The Secretary of State said that in this case it would want redrafting, but he really meant here the Governor-General in his discretion?—(Sir *Samuel Hoare*.) No—if you look up my answers. I think there are a whole number of questions arising under paragraphs 125 and 126, and I did not give a general answer of that kind.

14,067. I think, Secretary of State, really, on the face of it, you did, but perhaps you did not mean to?—Obviously, I could not have given a single answer on paragraph 125 because there are two or three issues in it.

14,068. I think you said that meant the Governor-General, and you referred me to some point in the Introduction?—(Sir *Malcolm Hailey*.) But apart from that, if I may say so, with regard to your immediate question, it would not be within the power of any executive authority to give directions as to the manner in which a judicial decree should be carried out.

Lord *Rankeillour*.] That answers the question.

Major *Cadogan*.

14,069. I only want to ask the Secretary of State one question arising out of a sentence which occurs on paragraph 8 of his Memorandum: "Importance has been attached by eminent legal opinion in India to the desirability of ensuring that the Court of Civil Appeal for India if and when it is established, should be

established on sound lines, and that its Judges should be of a calibre to command respect." Am I right in taking it for granted that the substitution of a Supreme Court side for the Supreme Court, for which provision is made in the White Paper, would involve an economy of personnel? I am speaking, of course, of the number of Judges necessitated by the enabling power to set up a Supreme Court side being given effect to?—(Sir *Samuel Hoare*.) I think it should.

14,070. Lord Reading has just now said that the Court would be the same; the Federal Court and the Supreme Court side would be the same?—Yes, I would have said, speaking as a layman and basing my view upon a general conception of what is likely to happen, you would be much more likely to have fewer Judges in one Court than you would have if you set up two.

14,071. That would be an additional advantage of your revision of the White Paper scheme?—Yes.

*Sir Reginald Craddock.*

14,072. Secretary of State, there are only two or three points I want to raise at this moment. I am not quite clear as to what happens in respect of the small States which have entered the Federation. They have not Courts of their own of any great importance and in the small States such as I am well acquainted with in the Central Provinces the Chiefs themselves are nearly always invested with certain powers which do not extend to life and death, and very often are still more restricted, and in those States the criminal law is administered with the aid of the Political Agent who, for example, would be invested with the power of a Sessions Judges with regard to the State with which he is associated, and there must be a lot of minor States in India who would be included in the Federation but who have no very large or competent courts of their own. In that case does the Federal Court come in as regards those small States which have got no High Courts or anything approaching a High Court?—(Sir *Samuel Hoare*.) Sir Reginald's question dealt with to a great extent criminal cases. He will remember that the Federal Court

does not enter into criminal cases at all. Apart, however, from that aspect of his question, what we had hoped would happen with the small States would be that they would group themselves for courts. There has been some discussion upon the subject, and there is obviously a movement afoot in the smaller States to group themselves and to have a common Court for a number of small States.

14,073. That, if I may say so, is a very good idea, for States such as there are in the Central Provinces, otherwise, they would not have any machinery in their own States for civil cases—nothing approaching a High Court. Then there is just one word I want to say about the prerogative. The prerogative we are accustomed to is the prerogative of mercy, and that, of course, cannot be touched. It is not provided for in the Criminal Procedure Code. The petition for commutation of sentence is made either to the local government or to the Governor-General in Council?—Yes.

14,074. But since Lord Chelmsford's time the Viceroy has had delegated to him the exercise of the Royal Prerogative as well. Previous Viceroys had not got that prerogative and in dealing with any criminal case they simply dealt with it as Governor-General in Council. I need not go into the details of what that exactly meant, but since Lord Chelmsford's time the Viceroy could, apart from his Council, exercise on behalf of His Majesty the Royal Prerogative of Mercy. I presume that all that is in the White Paper and in your Memorandum on such subjects does not pretend to touch that particular prerogative?—No, it is not touched at all.

14,075. That would continue?—It remains intact.

14,076. There is one other question I would like to put to you, if I might, Secretary of State, and that is that it is well known I think that the question of having a Supreme Court in India has been discussed and debated for some time past quite independently of the present proposed Reforms or the new Constitution?—Yes.

14,077. Would it be correct to say that that case for a Supreme Court depends upon the same merits or demerits as might have existed without regard to the

setting up of a Federation? That is to say, that a Supreme Court has nothing to do with the Federal scheme and it is merely a question of whether it is expedient to multiply appellate Courts within India itself or to introduce a court between the High Courts and the Privy Council; that is to say that the pros and cons of that case are not changed by this new proposed Constitution, but the case for or against them is precisely what it was when the question was discussed prior to the Reforms?—Yes. I am not, of course, in such full possession of the arguments that have been used in the past for or against a Supreme Court. Speaking generally, I should say that the arguments for the Supreme Court were very much what they have been in recent years.

14,078. That is to say, not necessarily a part of the new Federal Constitution at all. It is a question to be decided on the merits of practical civil and criminal administration?—I would not like to give an answer Yes or No to a question of that kind, because I have got in my mind a feeling that the setting up of a Federal Court may make the setting up of a Supreme Court branch of it more necessary than it was before.

14,079. On the ground of economy and so on, with a Federal Court which is necessary under a Federal scheme, a Supreme Court, or the functions of a Supreme Court, could be brought in with rather less expenditure?—I see what Sir Reginald means. He and I are not in disagreement on this point. I think this plan of bringing the two together is a better plan.

14,080. Then there is one other point I would like to refer to. In Proposal 103 the Governor has power to issue ordinances containing such provisions as it would have been competent under the provisions of the Constitution Act for the Provincial Legislature to enact. It seems to me that it is impossible that the legality of an ordinance might be challenged on the ground that it went beyond the competence of the Provincial Legislature. In that case is it contemplated that an application would be made in an ordinary court or straight to the Federal Court?—(Sir *Ma'colm Hailey*.) It would be judged, though it

was an ordinance, just as an act of the Legislature, and it would be questioned on the ground that it was *ultra vires* of the Legislature itself and that would come before the ordinary Courts.

14,081. But, in the meantime, would it be possible for the ordinary Courts or, above them, the Federal Court, to issue an injunction to the local government or to the Governor to suspend the execution of the orders?—If the ground taken were that it was *ultra vires* of the Provincial Legislature, although it was an ordinance, then it would be possible for the Governor-General to avoid all mischief on that ground by issuing an ordinance of his own which would have the same value as Federal Legislation, and that would be the most immediate way of getting out of the difficulty arising on that score.

14,082. I mean, it seems obvious that if it were possible for a Court to hold up an ordinance for the time being, the very object of the ordinance might be defeated. An ordinance would ordinarily be issued in some kind of emergency?—(Sir *Samuel Hoare*.) We have met the danger by enabling the Governor-General to intervene if the occasion arose.

14,083. But is the Governor-General's ordinance not similarly liable to challenge in the Federal Court?—You see, Sir Reginald, either the Governor-General or the Governor must be right. The issue would be: Is this power inherent in the power of a Provincial Legislature? If it is not inherent in the power of the Provincial Legislature, it is inherent in the power of the Federal Legislature.

14,084. I suppose under some of the special responsibilities there might be some powers on a borderline?—No, I think this covers the whole field—so my legal advisers tell me.

14,085. I hope that that possibility may be examined?—We will take note of what Sir Reginald says, but I am under the impression that the provisions are quite watertight in this respect.

Lord *Eustace Percy*.

14,086. Following on this question, I gather the position is that the Governor-General's or the Governor's action at his discretion cannot validate an Act which



would have been *ultra vires* of the Government altogether?—Yes.

14,087. On the other hand, I gather that the intention is that an Act which is within the powers of the Governor cannot be questioned by reason of the fact that it has been done by the Governor or by the Governor-General at his discretion and not by the Legislature?—Yes, that is so.

14,088. I want to make sure about the point which was raised the other day. Is it the intention that the Federal Court should have no power to interpret in any way the Instrument of Instructions of the Governor-General or the Governor?—Yes, that is so. The Instruments of Instructions will be not a part of the Act. They will not be scheduled. They will be referred to in the Act, but they will not be referred to in such a way as to bring them into Court.

14,089. I just wanted to get the intention clear?—Yes.

14,090. There is only one other point, going back to the question of concurrent legislation?—Yes.

14,091. I understand that the Federal Court will have a power in interpreting the constitution to say which of two Acts Federal or State does in fact prevail?—Yes.

14,092. But it is not intended that it should have power in such a case to interpret either the Federal Act or the State Act?—In the concurrent field?

14,093. In the concurrent field?—Yes, that is so.

14,094. Is there a possible distinction? Can you really in many cases decide which of two Acts should prevail without interpreting one or both Acts and are you not in danger by excluding this concurrent field from the Federal Court of getting a good deal of confusion between those two things?—When you use the word "State," you mean a Province?

14,095. I meant a Province; I beg your pardon; I meant a unit?—(Sir Malcolm Hailey.) The danger of course only arises if it is necessary to interpret a law as well as to say which of two laws prevails. I do not think there could be many cases of that kind, but I think it would be possible so to frame the con-

stitution that it should include both issues.

14,096. Should include both issues?—Should include both issues, yes.

14,097. That the Federal Court should have jurisdiction in both?—Where a constitutional question is involved; where it depended on the interpretation of the Constitution Act. If it were necessary for the purposes of that that it should interpret the terms of a law in the concurrent field, it would be possible to arrange for that, but the major premise would be that a question of interpretation of the Constitution Act was at issue.

14,098. May I put it to you that it is not in a small number of cases, but in a very large number of cases, where that is likely to arise, where the whole question will depend on what is the scope of the particular provincial Act. It will probably arise in that form; whether the provincial Act does extend to a supercession of a pre-existing Federal Act?—It is difficult to say that that would be necessarily a question of interpretation. I am afraid I am entering into an argument on the point, but to my mind it is difficult to see that that would necessarily involve a large number of questions of interpretation of provincial and Federal laws, merely in order to decide the question of repugnance.

14,099. I merely raise the point?—(Sir Samuel Hoare.) We will look into it.

Mr. Zafrulla Khan.

14,100. On this, may I make one suggestion to Sir Malcolm Hailey. No doubt difficulties would arise, and that is why the Courts are there to make a pronouncement, but may not one look at it in this way—wherever the question before the Court was which law is applicable to this matter, apart from the interpretation of that law, after it has been determined which law is applicable, and in doing so it has to decide whether a provincial law is applicable or a Federal law is applicable, whatever may be the considerations upon which the decision of the question may depend, that would be a constitutional question, and it would not be necessary to arrange that there may be an appeal. I venture to submit that on the present proposals there would

be an appeal to the Federal Court whatever the decision on that may be. It is only where the question arises: What is the meaning of this particular provincial statute, assuming that it necessarily applies that an appeal on that interpretation would not lie to the Federal Court, but may subsequently, when the Supreme Court is set up, lie to the Supreme Court?—Yes.

14,101. I think that is the distinction?—Yes.

*Major Attlee.*

14,102. Secretary of State, I would like to ask you again on that question of the exclusion of appeals on concurrent legislation from the Federal Court. I understand that your reason was that you thought there would be a flood of appeals which would overburden the Federal Court?—There were the two reasons which I just gave to Sir Reginald Craddock. The other reason, namely, that the concurrent field is a British India field and for the Federal Court proper we wanted to keep it to deal with the federation as a whole.

14,103. Taking the first point, if there is going to be this flood of appeals, will not you have a similar objection to that which you have already had with regard to the Privy Council being overburdened?—No, I think the effect would be that it would stimulate the Indian Legislature to bring into being the Supreme Court side of the Federal Court. In any case, the position would not be different from what it is now.

14,104. Yes, but the fact that the condition exists does not say that it is right?—If there was this great demand, presumably, then, the Indian Legislature would bring into being the other Bench of the Federal Court.

14,105. If there is this big demand it means that in order to avoid an expense for the Indian Government, you are putting a heavy expense on citizens who wish to take an appeal because they have to take the very expensive course of having to go to the Privy Council?—No, I do not think so; the position would be as it is now. If there is a great demand then the Indian Legislature would bring into being this other Bench of the Court.

14,106. I do not quite gather exactly what you wanted to make that distinction in your second reason, to keep the Federal Court only for Federal laws?—I should have thought the reason was the obvious one, that a Federal Court should deal with Federal questions in which all the units, generally speaking, are equally concerned.

14,107. Did not Lord Zetland make the point that of the present number of those subjects which are classed as Federal, in fact, certain of those subjects only apply to British India?—For the moment, but they are potentially Federal subjects, whereas the subjects in the concurrent field would presumably remain provincial.

14,108. Although potentially Federal, one would gather that there would be a considerable period of years before they would all become Federal?—Yes, that may be so.

14,109. Therefore, if there is a considerable anomaly in having the two bound up together, you are going to put up with that anomaly for a considerable number of years?—If Major Attlee would give his mind to the alternative, the alternative is setting up a Court in which the Federal side may be snowed under by the Supreme Court side. Also the effect of it may be to set up a Court to which, rightly or wrongly, some of the States may look with some suspicion on the ground that it is mainly a British India Court and is not really a Federal Court.

14,110. Has not it appeared from the discussion that you are going to get into considerable difficulties in still retaining one lot of laws which go direct to the Privy Council on constitutional points and another lot that goes, first of all, to the Provincial Court, and then to the Privy Council? Is it not rather anomalous?—I do not think so. I do not think that is the impression left upon me by this discussion. The impression left upon me by this discussion is that it is better to keep the two branches of the Court together, and that it is better not to embark upon the complete scheme until we know whether the Indians themselves want the second part of it.

Lord Snell.

14,111. How and when will it be decided whether the Supreme Court side of the Federal Court is required?—When the Indian Legislature pass a Bill.

. Sir Austen Chamberlain.

14,112. Secretary of State, if the proposals in your memorandum are carried out, and for the Supreme Court which was contemplated in the White Paper, there is substituted a branch of the Federal Court: would you consider the name of the Federal Court? Is not Supreme Court a better name than Federal Court, which was only used because you needed two names before?—I would not like to give an answer beyond saying that I will certainly consider a question of that kind. One has to take into account the back history of names of this sort, and hitherto the name of Supreme Court has been very much associated with British India questions, and it may well be that the representatives of the States would prefer to have another name, but I will certainly take the suggestion into account.

14,113. One has in mind the very high reputation attaching to the name in the case of the Supreme Court of the United States?—Certainly.

Mr. Zafrulla Khan.

14,114. Secretary of State, may I, before touching on matters which are referred to in your memorandum, ask you one or two questions with regard to the composition of the Court as set out in Proposals 151 to 153?—Yes.

14,115. The compulsory age of retirement in the case of judges of the Federal Court is suggested in Proposal 151 as 62 years?—Yes.

14,116. Would it not be advisable to raise it, say, to 65, in view of the fact that the kind of judge who is likely to be appointed to the Federal Court will, for various reasons, be appointed at rather an advanced age, and supposing a judge who was for the first time appointed to the Federal Court did not come from the High Courts but was sent out from England at an advanced age, he might not consider it worth while to go out for a small number of

years?—There is nothing sacrosanct about the proposal of 62 years; it is rather in the nature of a compromise. Some people have taken the view that it ought to be 60 and some have taken the view that it ought to be 65. I should like to hear the views of the Indian Delegates upon a point of this kind, and I will take note of what Mr. Zafrulla Khan has said.

Mr. M. R. Jayaker.

14,117. May I mention another reason in support of what Mr. Zafrulla Khan has said. Under Proposal 169 the High Court Judge retires at the age of 62?—Yes.

14,118. And I can imagine cases where such a retired High Court Judge, by reason of his special eminence, may be appointed to the Federal Court. If you have the same age limit, 62 in both cases, you will not have the opportunity of appointing a High Court judge even for three years to serve in the Federal Court?—Yes. I am not saying that it would be wise or unwise, but you could meet that point by reducing the age of the High Court judges.

Mr. Zafrulla Khan.

14,119. The compromise I suggest is that the compulsory age of retirement in the case of High Court judges may be fixed at 60, and in the case of Supreme Court and Federal Court judges at 65?—Yes. I am impressed by the point that has just been made, namely, that there ought to be a difference between the ages in order to enable a High Court Judge to go to the Supreme Court.

Sir Akbar Hydari.] Secretary of State, I had raised this case before, and you will see in the Gwyer-Schuster Memorandum they have contemplated the age of 65.

Sir Phiroze Sethna.] In paragraph 61 of the Third Report of the Federal Structure Committee, the retiring age is suggested at 65?—Yes; I will take note of these views. As I say, there is nothing sacrosanct in our 62 age limit.

Mr. Zafrulla Khan.

14,120. With regard to qualifications as described in Proposal 153, may I draw

your attention to a point which is set out in sub-Proposal (b) at the top of page 77: "has been for at least five years a judge of a State Court in India." Does that mean any State Court? Supposing he was qualified as laid down in the latter part of this paragraph?—It would mean in a State Court corresponding with a High Court.

14,121. So the meaning is a Superior State Court, an Appellate State Court?—That is so, the Highest Court in the State.

14,122. With regard to sub-Proposal (c), it says: "has been for at least five years a judge of any Court, other than a Chartered High Court, and was, at the date of his appointment as such, qualified for appointment as a judge of a Chartered High Court." I presume also here any Court means Commissioners' Courts, which are not Chartered High Courts but are in the position of High Courts?—Yes.

14,123. Coming to Proposal 155, one notices that there is a distinction drawn between sub-Proposal (i) and (ii). With regard to matters involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, the original jurisdiction of the Federal Court is proposed to be limited to cases where the parties to the dispute are the Federation or a unit on each side?—Yes.

14,124. But in regard to the second part matters "arising under any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces or a Province and a State", the provision would obviously apply to disputes of all kinds, whether they were between the Federation and a unit or units, or whether they were between private parties or a private party on one side and the Federation or a unit on the other?—Sub-paragraph (ii) is meant to be parallel with sub-paragraph (i), and not to raise a new issue of that kind.

14,125. So one understands that the limitation in sub-proposal (ii) would be obligatory; the matter must relate to a matter of that kind and must also arise between the units?—Yes.

14,126. Just the same as in sub-proposal (i)?—Yes.

14,127. With regard to proposal 156 (and here one begins to enter upon matters which are also referred to in your memorandum), a question arises on the appellate jurisdiction of the Federal Court?—Yes.

14,128. From High Courts other superior Courts in Provinces or States. I will draw your attention to your memorandum on this point. You say in paragraph 1: "On the other hand, it is obviously impossible to allow the Federal Court to be overwhelmed with a mass of appeals based upon the mere suggestion that a constitutional issue is involved; and we, therefore, propose that an appeal should only lie by leave of the Court whose decision it is desired to challenge, or, if that Court refuses leave, by leave of the Federal Court itself, unless the value of the subject-matter in dispute exceeds a specified amount." That is perfectly clear, as far as I have read out?—Yes.

14,129. But then you go on to say: "But we also intend, and the Committee will, no doubt, wish to consider whether express provision should not be included to that effect, that the Federal Court should have power to decline summarily to entertain any appeal, or any application for leave to appeal, where it appears to them vexatious or frivolous, or made only for the purposes of delay; though it would have to be made clear that this power could not be exercised where the Court from which the appeal is brought has already given leave to appeal." I understood the intention was to provide that you must get either the leave of the Court from whose decision you wanted to appeal, or the leave of the Federal Court, and, in any case, as your next paragraph provides in the form of a Case Stated. If the Court grants leave it must state a case for the Federal Court. If the Federal Court grants leave it must direct the High Court to state a case. What class of cases do you intend that this power of summarily refusing an appeal should apply to? Supposing the High Court has granted leave to appeal? You say this power should not apply?—Yes.

14,130. If the Federal Court has granted the leave to appeal, obviously there is no room for this power. The third case is where the value exceeds the limit you propose and the High Court does state a Case that the constitutional question does arise, and states a case to that effect. Then do you contemplate that the Federal Court in that case would say: "No, there is no constitutional issue; it is so frivolous that we shall not entertain it" ?—(Sir *Malcolm Hailey*.) All that was contemplated was that in cases where the original Court had not granted a certificate, and leave was asked of the Federal Court, the Federal Court should refuse leave to appeal in cases which were frivolous or vexatious, without calling on the original Court to state a Case. That was the intention.

14,131. It is only a point of drafting as it is now. There is no difference; but I thought once you had brought out that where leave to appeal is refused by the Court whose decision it is desired to appeal against, you may come and seek leave of the Federal Court itself, all those considerations are included in that. The Federal Court may refuse leave either on the ground that the decision of the Lower Court was justified, that there is no important question involved, on the ground that the appeal is frivolous; or on the ground that, although an important point is involved, there are decisions on the point already and their decision is not required ?—(Sir *Samuel Hoare*.) It is, as Mr. Zafrulla Khan says, merely a question of getting the drafting right. The intention is as he expresses it.

14,132. I think the additional power is not necessary ?—It is only desired to make it clear that there was this power.

Mr. M. R. Jayaker.

14,133. All these matters would go into the rules ?—Yes.

Mr. Zafrulla Khan.

14,134. They would not be in the Constitution Act. With regard to the question of appellate jurisdiction, that has been raised as to the interpretation of Federal laws, and some question has been raised also with regard to the interpretation of Federal laws operating in the concurrent field ?—Yes.

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14,135. I am merely reinforcing what has been said by the Secretary of State himself and some members of the Committee already, that if one looks at the list on page 119 of the White Paper, and if an appeal were to be allowed to the Federal Court from the very beginning on matters arising in connection with that list, could the Secretary of State's expert advisers tell him subsequently, or could the Secretary of State tell the Committee now, if he is prepared to do so, what scope would there be left for the subsequent setting up of a Supreme Court. What matters would then be left out with which a Supreme Court would have to deal if all these matters could go to the Federal Court ?—There is, of course, the provincial list of subjects, List No. II.

14,136. Yes ?—But Mr. Zafrulla Khan is quite right in his general conclusion that List No. III covers a very wide field ?

14,137. Yes. I do not deny that there would still be some cases that would not be covered, but am I right in saying that their number as compared with the number that arise here will be very small indeed ?—I expect Mr. Zafrulla Khan is right. I can only give an answer if I analyse rather carefully Lists II and III.

14,138. I am only suggesting that the great mass of law regulating matters out of which appeals to the Superior Courts arise is really, as to the great mass of it, covered by this List on page 119 ? I do not say that it is altogether covered ?—(Sir *Malcolm Hailey*.) There might be matters arising out of the Taluqdari Act and similar Acts relating to land.

14,139. I am not saying it is all covered, but it is covered to a very large extent ?—(Sir *Samuel Hoare*.) Yes; that is so. There is no doubt about it.

14,140. My suggestion is that if these matters came in at the very beginning to the Federal Court, it would amount to a decision. I am not opposing it but those who will assume the responsibility of it must keep it in mind—to establish one Court in the very beginning which would deal with almost all the matters, or to a very large extent, matters which would be dealt with by a Supreme Court if it were set up subsequently ?—Yes; I think that is so.

14,141. May I draw the attention of the Secretary of State to paragraph 161 ?  
—Yes.

14,142. The Governor-General is there empowered "in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it" ?—Yes.

14,143. Is it contemplated that the hearing of such a matter would be an ordinary judicial hearing, Counsel appearing, and so on, the same as the Privy Council procedure ?—What is in our minds is the analogy of the Privy Council, and I imagine that the same kind of procedure would normally be adopted by the Federal Court.

14,144. Assuming that that were so, then would there be a right of appeal to the Privy Council under paragraph 158 from a decision given by the Federal Court on such reference ?—No ; I do not think so. The Governor-General, I suppose, could always take another opinion if he wished, but there would be no appeal as of right.

*Dr. B. R. Ambedkar.*

14,145. There are no parties to it ; it is only the Governor-General asking for an opinion ?—The opinion is really an advisory opinion.

*Mr. Zafrulla Khan.*

14,146. Pursuing that matter for one moment, I understand—I am not quite sure about it but I will be corrected if I am wrong—that where a matter of that description is referred under the corresponding provision to the Privy Council, although the Privy Council gives in form only an opinion, the matter is necessarily determined to the extent to which it has been remitted to the Privy Council in accordance with the opinion given ?—I do not think you can go to that length. The Governor-General in coming to a decision asks for the advice of the Federal Court.

14,147. I first want to be sure whether that is the case in regard to the Privy Council ?—The case I have in mind with the Privy Council—it is a case that was dealt with during the time that I was

a Member of a Government—was the Irish Boundary Case. In that case, we asked the Privy Council to give us their opinion upon a very difficult issue between Ulster and the rest of Ireland. It was an advisory opinion. The Government acted upon the decision but the Government did not divest itself of its discretion.

14,148. I understand that the Governor-General would ask for advice and an opinion would be given to him, and then, no doubt, having obtained the advice of a Court like that, he would attach the greatest value to it ?—Certainly.

14,149. And he would not depart from it unless he was compelled to do so by very strong considerations ?—I think that would certainly be the position.

14,150. In that case, would it not be advisable—I merely make the suggestion—that the rules should provide that although there may have been a hearing in the judicial manner, the hearing should not be public in the sense that everybody would know what advice had been given, so that subsequently if the Governor-General was not able to see his way to act in accordance with that advice an agitation could not be started because that advice was not taken ?—I think the more latitude is left in matters of that kind, the more use is likely to be made of this procedure, and it is likely to be a very valuable procedure in future.

14,151. It is for that reason that I am suggesting that if the advice were given in a manner which did not gain too great a publicity for the advice, the Governor-General might be encouraged to make such references because it would leave him free after he had gained the advice to come to his own decision although he may attach the greatest value to that advice ?—Yes.

*Mr. M. R. Jayaker.*

14,152. Who would enforce the judgment under paragraph 161. Would it be a judgment under paragraph 160 ?—No, it would not be a judgment. It would be an advisory opinion.

14,153. Would the Governor-General give directions ?—It depends entirely what kind of advice it is and what kind

of action he would take. It is a very wide proviso, covering a number of possible cases, and it is very difficult to give a definite answer as to whether he would take action, and, if so, under what particular power he would take action.

14,154. You do not exclude it from the operation of paragraphs 125 and 126, where it does take the form of a subject in which he can give directions?—No. If it were in that field we certainly would not exclude it.

(After a short adjournment.)

Mr. Zafrulla Khan.

14,155. Secretary of State, may I now call your attention to the method of carrying an appeal to the Federal Court, and one or two other matters that arise in connection with that?—Yes.

14,156. If you will kindly turn to Proposal 118 at page 69, you will see that one kind of case in which constitutional questions might arise is proposed to be provided for in this manner, that where the validity of a piece of legislation is called in question on the ground that it was not within the competence of the legislation which actually passed it, then the trial Court before whom such a question is asked will state the question and make a reference with respect to that question to the High Court of the Province or the State?—Yes.

14,157. I presume that in the meantime the suit remains pending and stayed in the Trial Court?—Yes.

14,158. When the High Court has heard the matter and pronounced an opinion, would an appeal (because all these matters are bound to be constitutional issues that we are discussing now) lie from that opinion to the Federal Court, or would the subsequent course be that the High Court sends down its opinion to the Trial Court, which proceeds to pronounce judgment upon the whole matter. There is perhaps an appeal from the Trial Court's judgment on the other matters involved to the High Court and from the final decision of the High Court on appeal to the Federal Court?—I would like to ask my legal advisers about a point of this kind. It would seem to me that the simple way of meeting the position would be for the constitutional issue to be settled straightaway.

Mr. Zafrulla Khan.] I personally, for whatever my opinion may be worth, would agree with you.

Sir Hari Singh Gour.] May I draw your attention to the other aspect of the question? It may be that the issue which has been decided by the High Court may become unnecessary in view of the decision of the subordinate Court upon other issues; and, therefore, if the matter goes up to the Supreme Court, it may not be a matter of *res judicata*, but merely an interlocutory order not necessary for the decision of the case, and, therefore, time would be wasted in going to the Supreme Court and delay caused in the decision of the case which might eventually be upon other issues unconnected with the decision in question.

Mr. Zafrulla Khan.] May I take it upon myself to reply to Sir Hari Singh Gour upon this point? It is this: It may be that the opinion of the High Court, or if an appeal was permitted to the Federal Court, the final opinion of the Federal Court may eventually turn out to be unnecessary for the decision of that particular suit, but, nevertheless, it will continue to be a precedent for that question or similar questions when they arise in any subsequent legislation. The benefit of a precedent will not be one whit the less because it may subsequently be discovered by the Trial Court that that decision was not necessary.

Sir Hari Singh Gour.] No; it would be a decision that would be merely otiose, and not necessary for the decision of that case.

Mr. Zafrulla Khan.

14,159. Supposing it is contemplated that there should be an appeal at that stage, and I personally think that perhaps would be the more convenient course, what would happen in other cases not covered by Proposal 118 in which a question arose regarding the interpretation of the Constitution Act in a Trial Court in an ordinary suit? Would the

Court in those cases be required to state a Case and refer it to the High Court, staying the suit, as in cases arising under Proposal 118, or would it proceed to decide the question itself along with the other questions arising in the case, and let the matter be taken up to the High Court on appeal in the ordinary way?—I think that, subject to what I have said about consulting my experts' opinion again on the subject, my answer would be the same as my former answer to Mr. Zafrulla Khan, namely, that the constitutional issue would be decided at once.

14,160. By reference to the High Court and then an appeal provided to the Federal Court?—Yes.

14,161. That being so, there is a category of cases with regard to which the White Paper says, and your memorandum also says, that if the value exceeds a certain limit, and a constitutional question is involved, the High Court would be bound to state a case if it were required to do so by any of the parties for the opinion of the Federal Court?—Yes.

14,162. What kind of valuation have you in view? What is the valuation to which you would refer for that purpose; an issue having been sent up by the Trial Court to the High Court, the High Court, having pronounced their opinion upon that issue, what value would you decide upon as to whether the right of appeal to the Federal Court was to be given or not?—I should like to have the views of the British and Indian lawyers upon a point of that kind. We have no sacrosanct figure in mind. The figure in the case of the Privy Council is Rs. 10,000.

14,163. I was not so much on the figure you proposed, whether you proposed Rs. 10,000 or Rs. 20,000. My question was directed to this: What kind of valuation would you have in mind; the valuation which the plaintiff has valued it at in the Trial Court for the purpose of the suit?—That is the valuation. We had in mind the Privy Council analogy; whether it is applicable to this case or not I am not sure, but we were taking the Privy Council as our analogy.

14,164. In the Privy Council there is this distinction, that whatever it is, the

valuation of the suit which governs the course of appeals the Privy Council deal not merely with questions of law and interpretations, but in several cases, also issues of fact, and therefore that valuation has been prescribed and it must be a really substantial suit?—Yes.

14,165. But here you would be dealing with abstract questions of interpretation, and should the course of appeal be determined by the fact that as it happens the particular suit is of no value, although the question that might arise may be of very general and very great importance; and should there be a right of appeal as a matter of course because the suit happens to be of very great value, although the question involved, although being of a constitutional nature, is not of very great importance?—I see Mr. Zafrulla Khan's point. What we were anxious to do was to give the individual a right provided it was a substantial case, and whether the definition of a substantial case should depend upon the money value or not, I think is a question for discussion. We took it as a simple way of testing the substantial character of a case. If there is a better way of testing it, let us by all means have it.

14,166. I have raised this question for the consideration of your advisers?—Yes.

14,167. Because, supposing a question arose whether a certain Federal statute was or was not *ultra vires*, it would be hard if it should be determined by the amount that the plaintiff is willing to pay, because very often it is left to him to value a suit as he chooses, provided he is prepared to pay Court fees up to that amount?—We will certainly consider what Mr. Zafrulla Khan has just brought to our attention.

14,168. I can imagine classes of cases where it would be difficult for the plaintiff even to fix his valuation. They are recognised now by the Suits Valuation Acts, and it is said that the value of the suit shall be the value which the plaintiff himself arbitrarily may fix?—Yes.

Mr. Zafrulla Khan.] Therefore, I think this question should depend not so much on value as the character of the question raised.



*Mr. M. B. Jayaker.*

14,169. Even on the analogy of the present Privy Council practice, when there is a substantial question of law, it does not matter what the value of the suit is. That itself is a ground for appealing to the Privy Council?—Is it not the case that the special leave of the Court is required?

*Sir Hari Singh Gour.*

14,170. Yes?—Here we are dealing with a class of cases in which the individual has the right without the leave of the Court.

*Mr. M. R. Jayaker.*

14,171. What I was pointing out in support of what Mr. Zafrulla Khan said was that when the case is stated in the form of a law point, invariably it is a case in which a constitutional question of a substantial character is involved. Why should it be affected by the fact that it arises in the course of litigation whose pecuniary character is very small?—Surely those cases are safeguarded. Those cases would not be the cases in which the individual would be appealing?

14,172. Yes, it may be a case in which the individual appeals because it arises in the course of his litigation which he has started?—I see this is a substantial point. We will take it into account. The difficulty is to find some equally good and simple definition of the kind of case that may be taken to the Federal Court.

*Mr. Zafrulla Khan.*

14,173. There is one small point further to which I wish to draw the Secretary of State's attention. Perhaps it would only be a question of drafting in the end. In his memorandum and in the White Paper also, it is assumed that where a constitutional question is raised in a suit which satisfies the valuation test, then either party may require the High Court, as it were, to state a case for the Federal Court on appeal?—Yes.

14,174. Supposing the High Court after it had heard the reference from the Trial Court came to the conclusion that no constitutional question was involved in this matter and remitted the reference to the Trial Court, I think that is a case which ought to be provided for.

Is it a case which raises a constitutional question, or is it a case which does not? The valuation may be satisfied, and yet the High Court may say: "We have decided that no constitutional question arises; we are not bound to refer it." The party might contend that that question is itself a constitutional question. I have raised this case because this kind of question has created difficulty in my Province?—I am obliged for any points of this kind. We must certainly take them into account.

14,175. With regard to one proposal in the Memorandum where you suggest that in the event of your proposal finding acceptance a Supreme Court may subsequently be set up as a division of the Federal Court, the acceptance of that proposal would necessarily lead to this, that a separate Court would have to be set up for hearing criminal appeals of the kind that are provided for in paragraph 166?—Yes.

14,176. I merely want to suggest this to you, that the Supreme Court will not be set up for some time after the introduction of the Constitution, and, in the meantime, the Federal Court will have had time to establish its character, as it were?—Yes.

14,177. But, apart from the fact that naturally if you give larger jurisdiction there would be more work for it to attend to the value of a criminal appeal would be lost altogether if a Court of a somewhat inferior status was to deal with the criminal appeals from the High Courts. Looking at it from the point of view of the High Courts, I think that whereas they might reconcile themselves to their judgments in certain cases being subject to the scrutiny of the Supreme Court, they might resent that in these cases appeals should go from their judgments to an intermediate court, and from the point of view of the litigant I think the value to him of an appeal to the Supreme Court would be larger than the value of an appeal to a sort of intermediate court that might be set up consider appeals of this sort?—I can only say that all the expert opinion that I have consulted here is very much against putting the criminal cases into the Federal Court. They feel that they will really smother the Federal Court with

criminal appeals and the result will be that it will lose its essential character. They also think the result will be a very large Court with a great many judges.

14,178. On the other hand, the number of judges will not be any the less if you have a separate Court to deal with these criminal appeals?—I should have thought—but here I speak with great deference in the presence of a lot of distinguished lawyers—that it is very important to keep the standard of the Federal Court very high, and if you are going to keep it very high, you must not have too big a personnel.

14,179. That being so, do not you think that the opinion in British India might then stiffen in support of the proposal that there should be a separate British Indian Supreme Court which would deal with all kinds of appeals from the High Courts which are to be carried to the Supreme Court rather than that criminal appeals should be relegated to a sort of intermediate or inferior Court?—Lord Reading will correct me if I am wrong. I imagine it would be doing very much what is the actual practice here. I do not think anybody here would say that the Court of Criminal Appeal was an inferior kind of Court because it was not a part of the House of Lords.

14,180. It is inferior to the House of Lords?—Yes. I was using the word “inferior” in a more general way.

14,181. I was not using that expression in that sense at all, not that the Court itself would be inferior but a Court which was inferior to the Supreme Court?—I do not know what the Lord Chancellor and Lord Reading would think about this.

Marquess of Reading.] It would not be so in the Court of Criminal Appeal because the House of Lords would only have jurisdiction in any case which is certified by the Attorney-General as a case which involves a matter of law and general public interest.

The Lord Chancellor.] I think the point Mr. Zafrulla Khan is making is this. He says—I am not saying whether I agree or not—that if you have a Court of Criminal Appeal you do not want to have a Court of Criminal Appeal the judges of which will be held in less

estimation than the judges of the Court from which the appeal is brought. That is got over in England in this way. When we started a Court of Criminal Appeal here, we selected seven out of the fifteen King’s Bench Judges to hear the criminal appeals which came from their brethren. It was then found to be rather invidious to pick out seven of the fifteen Judges for the purpose and we passed another Act of Parliament under which all the Judges of the King’s Bench form a Court of Criminal Appeal and hear appeals from their brethren. Of course the trouble about the whole thing is this, as Mr. Zafrulla Khan will readily recognise. The population of England is very much smaller than the population of India.

Mr. Zafrulla Khan.] They are much more law-abiding, of course.

The Lord Chancellor.] I think if we had a very large number of criminal appeals in England, it would be quite impossible for the Court of Criminal Appeal, as at present constituted, to do its work. I forget the number, but I think there are less than 1,000 appeals a year.

Marquess of Reading.] And they usually sit one day a week.

Mr. Zafrulla Khan.

14,182. Will it not be better to work rather in the direction of further restricting criminal appeals, if that would afford a solution?—I would not like to give an opinion on a question of that kind without further consultation with my advisers. As I say, the great body of advice that has been given to me has been against bringing criminal cases into the Federal side.

14,183. I appreciate that. On the other hand, what is proposed is to have your ordinary civil appeals which are appealable to a High Court under the rules framed and to go to the Supreme Court division or side of the Federal Court when it is eventually set up?—Yes.

14,184. And criminal appeals, when they are permitted, whatever may be the restrictions, to go to another Court?—Yes.

14,185. Or the Federal Court to be entirely separate from the Supreme Court and British Indian appeals to go to the Supreme Court. This is the choice?—Is not there a third choice, that you might reserve the Supreme Court in British India for civil cases?

14,186. If you have two separate Courts, the Federal Court entirely separate from the Supreme Court, in case the suggestion made by you in your Memorandum does not find acceptance with the Committee or with Parliament afterwards and a separate Supreme Court is subsequently set up, would not that Court then hear civil appeals?—I should not like to give an answer to a question of that kind. I should think my answer would be that it might or might not; it would depend what view was taken of the subject, but I can conceive a Supreme Court which would not have an appeal jurisdiction in criminal cases.

14,187. If the proposals put forward in the White Paper were accepted, and given effect to, would not then the Supreme Court hear both civil and criminal appeals?—Yes.

14,188. Therefore, that is the choice between the White Paper and the Memorandum circulated by you. That is the choice at present?—Yes, but it is true to say that I have had this very strong representation from the expert opinion in recent months against having the two kinds of jurisdiction in the one Court.

Marquess of *Reading*.

14,189. May I ask you one question, Secretary of State. Perhaps you may have answered it while I was away, but you have been talking, as I understand, of another Court or a division of a Court for the Criminal Cases which would not have the same jurisdiction as the Judges in the Federal Court. That is what I understand you have been saying?—Yes.

14,190. May I ask whether you have considered the wider question of allowing, with the limitations that may be put upon it, and assuming that the extension of the Act is given, the appeal to the Federal Court with the jurisdiction to the Judges of the Federal Court to determine it, leaving it, as it

necessarily must be, for the Head of the Federal Court to determine which of the Judges of the Federal Court should listen to the case? What I am thinking of is this: Is it desirable—I only want to know whether this has been considered—that you should make distinction between the jurisdiction of Judges who will sit in the Federal Court? Is it not preferable that the Judges who will sit there will have all the jurisdiction of a Judge of the Federal Court, although you may divide them into certain chambers for convenience for the purpose of hearing one class of appeal and another?—Yes. I am not quite sure whether Lord Reading is talking only of civil cases or of criminal cases as well.

14,191. It really would apply in the same way to civil, but I thought your views did apply to civil cases. I had rather understood that in the extended Bill that was to be given, assuming that such a law was passed by the Legislature, there would be then an appeal to the Federal Court in civil cases?—Yes, that is so.

14,192. Then I contemplated—I do not know whether I was right—that there would be no distinction drawn between the Judges who would sit to try those cases and the Judges who would sit to try the purely Federal law cases?—That is so: there would be no distinction.

14,193. It is very desirable that there should be none. There never is in our Courts. It may be that a question will arise during the course of a case, it might be on a Federal matter or on a constitutional issue, which might involve a question of civil law. You do not want to have to refer from one branch to another. What I have understood hitherto is that every Judge of the Federal Court will have the jurisdiction which is given to the Federal Court and each Judge will have the same jurisdiction; it is not a question of one having jurisdiction to try constitutional questions and another class of Judge having jurisdiction to try other cases. I should have thought it would be better to have one class of Judge; he is a Judge of the Federal Court; in other words, a Judge of the Supreme Court which is to be consti-

tuted. Whatever cases come up would be tried by Judges of the Federal Court; certain Judges would be allocated for certain purposes, and no doubt they would be interchanged so that they all have the same experience. If that is so, and I understand it is, is it not possible to do the same with criminal cases with the limitations that are to be imposed upon criminal cases? I am only putting this for the purpose of dealing with the points that Mr. Zafrulla Khan has put?—I can only say that there is no side of this problem upon which my expert advisers have expressed a more definite opinion, namely, that to bring criminal cases into the Federal Court will be to swamp it and to alter its character, whatever limitations may be placed upon those cases.

*The Lord Chancellor.*] Mr. Secretary of State, as we are discussing matters here, might I put through you a question to Mr. Zafrulla Khan which is somewhat important on this matter? Do you contemplate that if you have a Court of Criminal Appeal that Court shall have a power to increase sentences? Let me just tell you what the position is. When we started in England the Court had no power to increase a sentence unless there was an appeal against a sentence, but after many years' working of the Court of Criminal Appeal the Scottish people set up theirs and they came to the conclusion that it was better that in all cases where you had an appeal to the Court of Criminal Appeal that there should be power to increase the sentences. The result has been somewhat remarkable; it has rather checked appeals. Have you contemplated which system you prefer in any way?

*Mr. Zafrulla Khan.*] Lord Chancellor, under our present system the High Courts have not only power to enhance sentences: they have also the power on appeal by a local government against an acquittal by a trial court to substitute a conviction therefor. So that that is provided for, and I do not know that it has checked the number of appeals.

*The Lord Chancellor.*] You would want, then, that the Court of Criminal Appeal should have power to increase sentences in all appeals?

*Mr. Zafrulla Khan.*

14,194. No. I think it should be a power which is necessarily for the due prosecution of the law, and wherever it is exercised is necessary. With regard to the Provincial Courts, I have only one or two matters to draw your attention to, Secretary of State. With regard to Proposal 169, on page 80, I have already made the suggestion that the retiring age should be 60 and in the case of the Federal Courts 65. I have no doubt your advisers will consider that?—Yes.

14,195. Proposal 172: I have a recollection that you explained in connection with this Proposal at some stage that, although in the Second Round Table Conference it was suggested that additional Judges should cease to be a feature of the High Courts in India, the Government of India had said that there were distinct advantages in retaining these Judges. The objection from the Indian point of view is this, that under this provision you have Judges, as it were, on trial, and instances have occurred where a Judge has gone on acting as an additional Judge for five, six, seven, and eight years before he is confirmed as a High Court Judge, with the possibility in between that whenever the term of his appointment expired he might be told that he was not going to be appointed, and from the point of view of the independence of the judiciary that was not a desirable state of affairs to have. Could you perhaps without any inconvenience disclose the reasons which have prevailed with you to suggest that this system should continue?—Yes, I certainly will give Mr. Zafrulla Khan an answer. I was assuming that we were not dealing with Provincial High Courts to-day.

14,196. Then I shall not press the question?—But Sir Malcolm could in a sentence just deal with the question. (Sir *Malcolm Hailey.*) The question really is purely one of expense. The difficulty to which Mr. Zafrulla Khan alludes certainly exists, but the alternative would be to have a permanent staff of Judges strong enough to provide a reserve, because you frequently find that a Court gets depleted by leave and the like in a way that it would not do in England.

Therefore, the device of having temporary or additional Judges has been resorted to simply to save the expense of creating a permanent Court so strong that it contains a reserve.

14,197. Sir Malcolm has combined the two, temporary and temporary additional. I can quite realise that when a Judge goes on leave for six months, during that period of six months you may be under the necessity of appointing an acting or deputy Judge, but what I was alluding to was this regular system of having attached to each Court a number of Judges almost permanently as it were, and yet who, if they happen to displease those in whose hands lies their confirmation, may not be appointed?—The case for additional Judges, of course, is somewhat different from that of temporary Judges who fill a vacancy due to leave. The reason for having additional Judges lies in the necessity for appointing officers to catch up arrears of disposals in the High Courts. Of late years the disposition, of course, has been to bring on to the permanent staff the additional Judges who are found to be indispensable.

Lord Rankeillour.

14,198. On a point of order, my Lord Chairman, are not we dealing with another section on another day to discuss these High Court matters?—(Sir Samuel Hoare.) I hope very much we shall not get into any detail with them. I was assuming that to-day we were only dealing with the Federal Supreme Court.

Mr. Zafrulla Khan.

14,199. Then I will not press the matter. There is only one further question, in case it is permitted, with regard to paragraph 175, and I want you to say whether I am right in assuming that paragraph 175 means only this, that it is proposed to clear up in the new Constitution Act that the power of superintendance at present given to the High Courts under Section 107 of the Government of India Act has no judicial aspect whatsoever and to define it more clearly in the Constitution Act?—Yes, that is so.

14,200. If that is so, then may I assume that there is no intention to

confer upon the Federal Legislature any particular power under this proposal?—No, there is no such intention.

Marquess of Reading.

14,201. Secretary of State, may I ask you one question with reference particularly to paragraphs 158 and 167. I only want to draw your attention to the fact and see that we understand what it is that is proposed. I am drawing attention to it because of your Memorandum which somewhat changes than what is appearing in paragraphs 163 to 167. As I understand from what you have said to us, on any question of appeal to the Federal Court on constitutional issues or on the interpretation of Federal laws, there would be a right of appeal to the Privy Council, subject always as it appears, to the grant of special leave and so forth. I am referring to paragraph 158. It begins: "An appeal will lie without leave to the King in Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution Act," and for the purpose of your Memorandum one understands and of the Federal laws?—Yes.

14,202. Under paragraph 167, where you are dealing with the establishment of a Supreme Court and, of course, it would only apply if there is the extension which we are discussing at the moment, the second sentence is: "An appeal from the Supreme Court to His Majesty in Council will be allowed in civil cases only by leave of the Supreme Court or by special leave." If you are constituting your Federal Court, and if there is the extension to which reference has been made, you would have to make clear, would not you, the distinction which you draw in your Bill between the right of appeal from the Federal Court in civil cases or the right of appeal on constitutional issues, or on the interpretation of a Federal law?—Yes, certainly; we should have to make it clear.

14,203. As I understand, you mean to continue as it is here; that is, the right of appeal without leave on the constitutional and Federal laws questions, but the right of appeal with leave to the Court on civil issues?—I think that is so.

Archbishop of *Canterbury*.

14,204. On the same paragraph, Mr. Secretary of State, if I am not interfering with other questions, and I apologise for not being here this morning, supposing this alteration were made and you had a Federal Court with its two branches: the last sentence is: "In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise." Has that been discussed this morning?—Yes, at very great length, your Grace.

Archbishop of *Canterbury*.] Then I will not ask you any questions upon it.

Sir Akbar *Hydari*.

14,205. I take it that when in proposal 151 in the second sub-paragraph you say, "appointed by His Majesty", it means His Majesty on the advice of the Ministers in the United Kingdom?—Yes, that is so.

14,206. Then, Mr. Secretary of State, you remember I had asked you a question about the constitution of the Federal Court in Proposal 153, so as to permit judges of the State Courts to be eligible, and you said you would kindly consider it?—Yes, certainly.

14,207. I want to put it to you whether it would be possible for you to accept in paragraph 153 (a) the words "or of the High Court of a State"?—I think we certainly ought to look sympathetically into a suggestion of that kind.

14,208. Thank you. Then also in Sub-paragraph (e) you might have say, "has been for at least fifteen years an Advocate or Pleader of any Provincial or State High Court or any two or more of such High Courts in succession"?—I think we certainly ought to look into that.

14,209. Thank you. Then with regard to paragraph 155 (i) and paragraph 158 there may be agreements of other documents which are not actually part of the Constitution Act itself but are to have the same force and affect as the provisions of the Constitution Act. Would they be treated in the same category under 155 (i) or not?—What exactly has Sir Akbar *Hydari* in mind? Does he have in mind, for instance, the Instrument of Accession?

14,210. You have said that they would come in?—Yes, they would come in.

14,211. But there might be some other agreements subsequently entered into which have Constitutional validity and about which it is declared that they have some force?—You mean if there were further Treaties of the same kind as the Instruments of Accession?

14,212. Yes?—Yes, they would come in.

14,213. Then only one more question with reference to your Memorandum. I have not had time really to consider adequately the proposals of the Secretary of State for enlarging the jurisdiction of the Federal Court and for providing for the establishment of a Supreme Court of Civil Appeal for British India as a Divisional Court, but my present impression is that the State might feel some hesitation in regard to these proposals, and especially after what we have heard about the possible addition of the Bench of Criminal Appeals to the same Court. One example of the hesitation that I have in the proposal to give the Federal Court jurisdiction to hear appeals arising under Federal legislation as distinguished from the Constitution Act. I appreciate the advantage of uniformity in the interpretation of Federal legislation, but it occurs to me to ask whether the Secretary of State has considered whether his object would be met by a provision that any point of interpretation of Federal law arising in the course of a case before a State High Court should be taken for decision to the Federal Court and the case then remitted to the State Court for Judgment on the merits?—I have not had time to consider the suggestion in detail. Upon the face of it, it appears to me to be a suggestion that is deserving of careful consideration. Sir Akbar accepts what I think we all accept, the need for uniformity in the field of the Federal legislation. Let me give a single case in the great body of cases connected with company law and so on. He also appreciates the fact that the Federal Court is just as much a Court of the States as it is of British India. I will certainly look into his suggestion, and, as I say, it appears to

me to be deserving of very careful consideration.

Archbishop of *Canterbury*.

14,214. On that point, Secretary of State, you will remember that the Chamber of Princes was rather anxious to meet the point of appeals from the State Courts on Federal laws; it might be possible to make some special arrangement or devise some machinery to deal with these particular cases? They rather pressed that point?—I do not know about each particular case, your Grace, but I think anyhow I have said enough to show that we will look very carefully into this suggestion.

*Sir Manubhai N. Mehta.*

14,215. Secretary of State, I take it that your new Memorandum has enlarged the sphere of the jurisdiction of the Federal Court, and I also take it that it will necessitate a revision of the language of Section 156?—Yes, that is so.

14,216. The words are: "any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder". "Thereunder" would mean "Constitution Act". You now mean under any Federal law?—Yes.

14,217. Rights or obligations arising under any Federal law?—Yes, List I, Federal Laws.

14,218. So that "arising thereunder" will have to be changed?—Yes.

14,219. In this connection I would refer to the previous Reports of the Federal Structure Committee and also the Proceedings, in order to show what the attitude of the Princes was; it was a very favourable attitude towards this extension. Dealing with the Proceedings of the 22nd October 1931, Sir Mirza Ismail was deputed by all the States to put forward on behalf of the States what the States' attitude would be as regards the Federal Court, and this was the reply given by Sir Mirza Ismail to the Questionnaire. The question was: "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, namely, in any matter involving the interpretation of the constitution? Please mark the question

was as regards the enlargement of the jurisdiction. The reply given by Sir Mirza Ismail was: "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution." He departs from the word "Constitution" and uses the term "federal law". He makes it sufficiently wide?—Yes.

*Sir Manubhai N. Mehta.*] After that the Maharaja of Bikaner on the same day proposed this limitation, and the reply given by Sir Mirza Ismail is: "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution." "The words I am asked to suggest" (this is supplementary) "should be added are words which I think the Delegation had intended, but there has been a slip. They are these words:—'except in matters which, though federal, are administered by the States themselves.'" What his Highness meant was that in the case of subjects where administration was reserved by the States the States may not like that the final appellate jurisdiction may lie with the Federal Court, but their own judges may be vested with the final powers. May I also take it that the Federal Structure Committee's First and Third Reports also went to the extent of limiting it to any issue arising from the Constitution Act. Now you have enlarged it so as to include any issue arising out of any Federal law.

*Marquess of Reading.*

14,220. Arising under the interpretation of any Federal law?—Arising out of the interpretation of any Federal law.

*Sir Manubhai N. Mehta.*

14,221. That relief will be open even to the subject of an Indian State?—Yes. I think Sir Manubhai will find, if he goes into the kind of cases an illustration of which I gave just now of company law, that some extension of this kind is very necessary.

*Sir Manubhai N. Mehta.*] I do not deny it.

Sir Akbar Hydari.] It is just possible that that particular head might have practically the same position as the position of a head in the concurrent field vis-a-vis the Province and the Local Government.

Sir Manubhai N. Mehta.

14,222. That is another question. That is why this morning I raised the question as regards original jurisdiction which would be confined to a dispute between one unit and another unit, a State and a Province or a State and a State, but in the case of the appellate jurisdiction the case may be started by a private citizen; he will first exhaust his remedy in the State Court, and if he has a grievance and wants to go to the Federal Court of Appeal he will have his case stated, and the State Court will send it up for reference to the Federal Court for its opinion, and when that opinion is received it will decide according to that opinion?—Yes.

14,223. So that it will be a decision still of the State Court in accordance with the opinion of the Federal Court?—The State Court will be carrying out the decision of the Federal Court.

14,224. For this purpose the Lord Chancellor has promised to the States some formula empowering the Privy Council and the future Federal Court to exercise its discretion on behalf of the States. May I inquire when such formula will be supplied to us?—I do not recall the actual incident, but I will look it up and let Sir Manubhai Mehta know.

14,225. In fact that was what Sir Mirza Ismail referred to?—I will look it up and find what action was taken, and communicate with Sir Manubhai.

14,226. These were his words: "The States naturally attach great importance to the principle that the creation of the Federal Court should not affect their sovereignty in any degree. It will be necessary, therefore, to make it clear that the Federal Court derives its jurisdiction, not from the Crown alone, but from the Federating States as well" ?—Yes, certainly.

Dr. Shafa'at Ahmad Khan.

14,227. Sir Samuel Hoare, what is exactly meant by a State Court? Do

you recognise the court of any State?—I did deal with that point incidentally this morning in connection with the smaller States, and it would want a definition exactly of what was meant by the State Courts. We do not mean a very small Court in a very small State.

14,228. Will the Federal Court be given any power of recognising any State Court or will it be obliged to recognise the Court of every State that federates?—I think we should have to make a definition in the Act.

14,229. I think so. I think it is absolutely essential, if I may say so?—Yes.

Sir Manubhai N. Mehta.

14,230. Then one further point arising out of the Report of Sir Claude Schuster and Sir Maurice Gwyer; it is this practical difficulty: Supposing two States, two subjects, are involved in litigation. One State has accepted a particular subject to be a Federal subject and has entered it as such in its Instrument of Accession; the other State has not entered that subject in its Instrument of Accession. I take the subject of insolvency: there are two contiguous States and one State has accepted insolvency as a Federal subject and the other State has not. Sir Claude Schuster thought that in such a case the Federal Court cannot have jurisdiction; it can have jurisdiction only in cases where both the Courts have accepted the subject as a Federal subject?—That is so.

14,231. So that will have to be remedied also?—Yes.

14,232. It is not mentioned in your memorandum?—We think it is covered. My memorandum is not in substitution for all these various provisions. It is rather in further comment on them, and I think that point is covered in proposal 155. Anyhow, I agree it ought to be covered.

14,233. Then I come to the methods of execution. There, the two proposals, 160 and 162, will also be modified by your present memorandum, because proposal 160 begins: "The process of the Federal Court will run throughout the Federation," and in your memorandum you point out the difficulty?—Sir Manubhai, the memorandum really explains what we contemplate will happen under Proposal 160.



14,234. So the language of Proposal 160 will have to undergo a change?—We will certainly look into it, but the memorandum is meant to be a comment on what will happen under Proposal 160. Quite obviously, in the further drafting we should have to make our intentions quite clear.

14,235. What I wanted to know was that any execution which the Federal Court orders will have to be carried out through the proper agency and not by itself?—Yes, we accept that. That is the basis of our proposal.

14,236. The language was: "The process of the Federal Court will run throughout the Federation"?—If it is necessary to amend the wording we shall have to amend it.

Mr. Y. *Thombare*.

14,237. There is one matter about which I have a question. A question has been raised about the High Courts of small States?—Yes.

14,238. About that the Butler Committee made a distinction between States which find it difficult on account of their limited resources, to perform properly the functions of Government and the States which do not find any such difficulty?—Yes.

14,239-40. Do I understand that this distinction will be borne in mind?—Yes, certainly.

Sir *Abdur Rahim*.] On Proposal 161, I want to be quite clear as to what is meant. A justiciable matter, I take it, means any matter which is capable of being adjudicated upon by the Courts. That, I take it, is the meaning of "justiciable matter." The Governor-General is empowered to make a reference to the Federal Court and obtain its opinion on any such matter.

14,241. For his own use?—Yes.

14,242. That is not a matter which he is bound to publish, but it will be entirely for his own use. He may act upon it, or he may not?—Yes.

14,243. Although, I take it, in most cases he will act upon it. I think you have made that quite clear?—Yes.

14,244. But what I want to be clear about is this: whatever opinion the Governor-General may have obtained

from the Federal Court that will not in any way interfere with the rights of any parties aggrieved in any matter to take it to the Court and obtain its decision?—The Federal Court could not be bound. This is only asking for an opinion. Quite obviously, it could not stop a case.

14,245. Exactly. The party can take a matter to the Court and obtain its decision?—Yes.

14,246. Whatever may be the opinion which the Governor-General has obtained, and whether he acts upon it or not?—Yes, certainly. I am assuming that the Court has jurisdiction for that purpose. If the Court has jurisdiction for the purpose, certainly, yes.

14,247. If it is a justiciable matter?—Within the jurisdiction of the Court.

14,248. It will be within the jurisdiction of the Court?—No; I said, if it is a justiciable matter within the jurisdiction of the Court.

14,249. Would not all justiciable matters be within the jurisdiction of the Court?—No; only those matters would be within the jurisdiction of the Court that are within the jurisdiction of the Federal Court.

14,250. Of course, within the jurisdiction of the Federal Court?—Yes.

14,251. It will be within the jurisdiction of some Court or other, but this will not apply if it is not within the jurisdiction of the Federal Court?—I do not want there to be any misunderstanding between Sir *Abdur Rahim* and me on this point. If the issue is within the jurisdiction of the Federal Court, then anybody may take a case to the Federal Court to get a decision, quite apart from the fact of whether the Governor-General has asked for its advisory opinion or has not.

14,252. Quite?—If, on the other hand, the case is not within the jurisdiction of the Federal Court (say, for instance, it is within the domain of paramountcy, or a dispute outside the Federal sphere), then of course nobody could take it to the Federal Court because the Federal Court would not have jurisdiction.

14,253. That I quite understand. Then another matter about which I think you were asked some questions: that is as

regards the Instrument of Instructions to the Governor-General not being subject to interpretation by the Court?—Yes.

14,254. I quite understand that, but, I take it, the Instrument of Instructions, as I think you made clear on previous occasions, will deal only with the manner in which the Governor-General is to exercise his special powers and his special responsibilities. It does not in any way affect the law or override the provisions of the Constitution Act?—No, the Instrument of Instructions confers no power whatever on the Governor-General or the Governor. It merely instructs him as to the relations between his Ministers, and so on, but it confers no new powers upon him.

14,255. Therefore, any interpretation by the Courts of any Federal law or any constitutional issue would not be affected in any way by the Instrument of Instructions?—No; it would not.

*Sir Hari Singh Gour.*

14,256. Secretary of State, as regards your memorandum I understand that it modifies, as you have said, the provisions of the White Paper, dealing with the Federal Court and the Supreme Court by amalgamating the two Courts as far as possible in a single Court and conferring upon this Court the dual jurisdiction conferred in the White Paper on the Federal Court, and partially on the Supreme Court?—Yes.

14,257. The difficulty that I experienced is this: While this will undoubtedly make for economy, because the personnel of the Federal Court, who will not be engaged in dealing with questions germane to that Court, would be available for the disposal of matters coming up before the Supreme Court, the difficulty, I feel is this, that you have, if I may be permitted to say so, truncated the Supreme Court by taking away from it all jurisdiction in criminal cases, provided by Proposal 166, subparagraph two?—Yes, we do propose to keep the criminal cases separate.

14,258. But if you had left the proposals of the White Paper as they are, that would have given the Federal Legislature an opportunity of enacting a measure creating a Supreme Court

both for the disposal of civil and criminal appeals, and that power the Federal Legislature has now been deprived of, because the Federal Legislature can only now create a Court of Criminal Appeal and not a Supreme Court dealing both with Civil and Criminal cases?—No; that is not our intention. Our intention is to give power to the Indian Legislature to create both a Supreme Court and a Court of Criminal Appeal.

14,259. And that Supreme Court would then be such a Supreme Court as is described in paragraphs 163 to 167?—No. Keeping the Criminal cases separate; but we have no wish to put any obstacle in the way of the Indian Legislature having a Court of Criminal Appeal if they so wish it.

*Sir Abdur Rahim.*

14,260. Then there will be a third Court?—Yes.

*Sir Hari Singh Gour.*

14,261. That will be a third Court?—Yes.

*Mr. M. R. Jayaker.*

14,262. You say that in your memorandum, do you not?—Yes.

*Sir Hari Singh Gour.*

14,263. In the constitutions of Canada, South Africa, and Australia, the Supreme Courts, so far as I understand, are more or less on the lines adopted in your paragraphs 163 to 167, that is to say, they are Supreme Courts both in regard to Civil and Criminal matters?—Yes; the reason we have excluded the Criminal cases is the reason I have given earlier in the day, namely, that in India there are so many of them that it would swamp the Court and alter its character as a result.

14,264. But there is a strong feeling in India that there should be an appeal in Criminal cases?—There would be, but it would be to a Court of Criminal Appeal.

14,265. Would you pay the judges of the Court of Criminal Appeal differently from the judges of the Federal Court?—I had not thought about that.

14,266. If their salary is the same, the expense would be greater, because the Court of Criminal Appeal will have separate offices, an English and a vernacular office, whereas if they were judges of the Federal and Supreme Courts, the offices would be the same?—I would, of course, take what Sir Hari Singh Gour says as a fact in a matter of this kind, but I still say that my advisers are strongly against bringing the Criminal cases into the Civil Court.

14,267. On the two grounds you have stated?—Yes.

*Sir Abdur Rahim.*

14,268. But in the High Court and the Privy Council there is no distinction made. The High Court hear both Civil and Criminal matters?—Of course, here there is a separate court of Criminal Appeal.

14,269. But it is constituted out of the judges of the High Court, the same judges?—We could consider that possibility in India.

*Sir Abdur Rahim.*] There is no need for a third separate Court.

*Sir Hari Singh Gour.*

14,270. The difficulty would arise in this case; if you constitute a Court of Criminal Appeal out of the judges of the High Court, you will have to add to the judges of the High Court, because the appeals that would come from the High Court to the Court of Criminal Appeal would necessarily entail the addition of judges?—Yes; that would be so.

14,271. As regards the qualifications of the judges of the Federal Court, I find that these qualifications are different from what obtain at present, for example, as regards appointment to the Privy Council. I have never come across a case, and Sir Malcolm will correct me if I wrong, where any Civilian judge from India has been appointed to the judicial Committee of the Privy Council?—Not within recent memory, certainly.

14,272. Not that I am aware of, and the practice of the Privy Council has always been to follow the procedure of appointing judges from the Bar, a prac-

tice which has been adopted by the Dominions?—Yes.

14,273. Then why should there be a departure if you really want that the Federal Court and the Supreme Court should command the popular confidence and respect which they ought—they should follow the precedent of England and of the Dominions, and that judges should be drawn exclusively from the Bar in the sense that barristers who are also judges of the High Court would be eligible?—I think in an Act of Parliament it is very difficult to discriminate against one kind of judge, although in actual practice the judges of the High Court may normally be taken from the class of barristers, and so on.

*Sir Hari Singh Gour.*] But that has been done, Secretary of State, in the case of the Colonies and in the case of your own country. As a matter of fact, the whole history of your country is a history of professional men being appointed to discharge a highly technical duty of deciding cases.

*Marquess of Reading.*] Is not Sir Hari's point met by paragraph 153, subparagraph (d), a barrister of at least 15 years' standing?

*Sir Hari Singh Gour.*] A barrister is eligible, but many other people are eligible too.

*Mr. N. M. Joshi.*] Why not?

*Sir Hari Singh Gour.*] He has been put in the same category as judges of the High Court and Judges of the State Court, and so on, whereas my submission was that judges of the English Court are exclusively drawn from the Bar, judges of the Dominion Courts are exclusively drawn from the Bar, judges of the Privy Council are also exclusively drawn from the Bar, and the same practice should be followed here.

*Marquess of Reading.*] They may be from judges of the High Court. It is not necessarily a practising barrister. If a practising barrister becomes a member of the High Court, then he may either go to the Court of Appeal or to the High Court, and from there is made a judicial member of the House of Lords, and in that case he sits also in the Privy Council, but he is not promoted directly from the

Bar. It is because he has distinguished himself as a judge.

Sir *Hari Singh Gour*.] That is the case I was referring to. I was asking the Secretary of State, and no doubt Lord Reading will be able to enlighten me, has there been a single case of a Civilian judge of the High Court ever being appointed to the Privy Council ?

Marquess of *Reading*.] I do not recall one, but that is only a recent thing.

Sir *Hari Singh Gour*.] There never has been a case as far as I am aware, and the reason is that the Privy Council follows the practice of the English Courts, and the English Courts follow the universal practice of appointing their judges from the Bar.

Archbishop of *Canterbury*.] Do I take Sir Hari Singh Gour's point to be that among the judges of other Courts who are here qualified to be judges of the Federal Court, there may be many who are not members of the legal profession ?

Sir *Hari Singh Gour*.] Yes.

Archbishop of *Canterbury*.

14,274. Then I should like to ask on that, Secretary of State, whether in the case of the Federal Court those reasons which were urged in favour of not restricting even the Judge of a High Court, or a Chief Justice, to Members of the Bar—administrative reasons which were fully explained because administration and law are so much combined in the Provinces—whether these considerations would apply in the case of Judges selected for the particular class of business which the Federal Courts would have to transact, and in that case whether it would not be really much better to restrict it for the Federal Court, with its quite exceptional function in the interpretation of the law and its final decision, to those who from the first have had an equal training ?—I think in actual practice that is the way it would work, but I do feel considerable hesitation in agreeing to a proposition in the Constitution Act that differentiates between one High Court Judge and another. I think, in actual practice, this small number of very distinguished Judges will be recruited from the Bar, but as long as judicial officials are eligible for High Court Judges, I think

it is very difficult to discriminate between them and the other people who are qualified for appointment to the Federal Court.

14,275. But the reasons which make it right for men to be selected as Judges for the High Court without being at the Bar or without having had a little training do not apply for the purposes of the Federal Court. It may or may not be desirable not to discriminate between those who have been made Judges, but the reasons why certain men have been made Judges in the High Courts do not obtain in regard to Federal Courts ?—I would not like to go so far as to say that.

Marquess of *Reading*.

14,276. He must have been a Judge for at least five years in order to be eligible under your scheme ?—Yes.

Sir *Abdur Rahim*.

14,277. There is another way of meeting the situation, and that would be through the Instrument of Instructions. The Governor-General would advise, I take it, and make a selection ?—(Sir *Malcolm Hailey*.) No, the Crown.

14,278. I know, but it is upon the advice of the Governor-General ?—(Sir *Samuel Hoare*.) As I say, I see great difficulty in discriminating between one individual, who has been a High Court Judge for such and such a number of years, and another.

Marquess of *Salisbury*.

14,279. Does it make no difference in the view of the Secretary of State when he finds that Indian lawyers themselves desire this discrimination to be made ?—Naturally I pay attention to views expressed from every quarter in this room, but I did make a strong argument the other day for retaining the judicial service as a part of the Indian Judicature, and, holding that view, I find some difficulty now in making a legal and constitutional discrimination against a particular part of the Indian Judiciary.

Sir *Akbar Hydari*.] I should certainly deplore any exclusion from the Federal Court of a Judge like the late Sir Raymond West. He was a very distinguished civilian Judge of the Bombay High Court, one who is noted for his great ability.

Sir *Hari Singh Gour*.] But he never sat in the Privy Council.

Sir *Akbar Hydari*.] No. I say if you confine your selection to only the barrister Judges of the High Court, then you would exclude men of such eminence from the Federal Court.

Marquess of *Reading*.

14,280. Is not the whole object of your qualification of five years as a Judge to give you an opportunity of seeing how he has comported himself as a Judge and how he has discharged his duty whether as a civilian or as a barrister?—Certainly.

Mr. *M. R. Jayaker*.

14,281. May I just point out to the Secretary of State this as regards his point that it would be invidious to make distinction between one High Court Judge and another? He may correct me if my impression is wrong, but is not the present rule this, that out of all High Court Judges, only a barrister High Court Judge can rise to be made Chief Judge of the High Court?—Yes.

14,282. That discrimination is made under present law?—(Sir *Malcolm Hailey*.) It is not proposed under the White Paper.

Mr. *M. R. Jayaker*.] I am coming to that, but there is distinction made at the present moment by Acts of Parliament between one High Court Judge and another High Court Judge.

Sir *Hari Singh Gour*.

14,283. And that discrimination was sought to be set aside, I think, when Lord Peel was Secretary of State, and the whole of India rose up in arms against that Bill which had to be dropped in the House of Commons. The Secretary of State may verify these facts by referring to the fate of that Bill, which was introduced into the House of Commons and had to be dropped like a hot potato in consequence of the overwhelming opposition from all parts of India?—(Sir *Samuel Hoare*.) Then all I would say is that if you want to do away with that discrimination in one direction, you ought to do away with it in all directions.

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14,284. We are not doing away with discrimination at all. For 150 years, that post has been held by barristers. The Judicial Committee, at the present moment, are the final arbiters in matters of Constitutional law and procedure. They are manned exclusively by members of the Bar. Only recently, during the viceroyalty of Lord Reading, two Indian Judges were added to the Privy Council, and they are both Members of the Bar, and it was so provided. The point I am making is that in the law and history of British Rule in India, and for the matter of that of British connections in the Dominions overseas, there has never been a case of a civilian being appointed to the Supreme Court, either of the Dominions or of the Privy Council, and we are making now, for the first time, a departure in introducing civilian Judges into the final Court of Appeal in India?—No. Sir *Hari Singh Gour*—I say this with great deference as he is a great lawyer and I am not—is really quite wrong. There is no statutory limitation at all upon anybody being appointed to the Privy Council. Anybody could be appointed to the Privy Council whether he had been a barrister or whether he had not been a barrister. The actual practice has been that barristers have invariably been appointed. That may very well be so in the case of the Federal Court.

Marquess of *Reading*.

14,285. Do you mean the Judicial Committee of the Privy Council?—I mean the Judicial Committee. Is there any statutory provision? I am informed there is not.

14,286. I will not undertake to say. I do not think it has ever been raised. I rather think there is, but I will look at it, but there never has been a case?—We are not disagreeing about this. I am not saying there has never been a case but I understand there is no statutory limitation.

14,287. I rather think there is?—I will look it up, but my advisers here tell me there is not. (Sir *Malcolm Hailey*.) The Judicial Committee Act, which lays down that certain persons shall be formed a Committee to be styled the Judicial Committee of the Privy Council, specifies

certain persons, including the Keeper of the Great Seal, and adds at the end "Two other Privy Councillors appointed by His Majesty." I have no doubt as a matter of convention they are generally persons of the legal profession.

Marquess of *Salisbury*.

14,288. If the Secretary of State were to say to us that in point of practice there never will be a man appointed to the Federal Court who has not got a training as a lawyer, it does not matter very much whether it is laid down in the Constitution Act or not if it is absolutely certain. In the same way I believe still—certainly up to a short time ago—every Peer had a right to sit as a Member of the House of Lords Court of Appeal, but, in point of fact, of course, no Peer who has not had a high legal training does sit. That is very often the practice in England, that a thing is done even though it is not absolutely legally prescribed. If that is what the Secretary of State means, I should not wish to press him, but I must say that I do think when we are laying down a Constitution of a most elaborate and most difficult kind, in which the finest distinctions of Constitutional law have to be made, and that is to be interpreted as meaning gentlemen who have no training in the law at all—?—Lord Salisbury is surely overstating the case. This is not a question of people who have no training in the law at all. This is a question of a High Court Judge for five years.

14,289. He might have been Chairman of Quarter Sessions for five years, as it were?—Judge of a High Court for five years. I do not know what Lord Reading would say about that. I should have said that that was very considerable legal training.

Sir *Austen Chamberlain*.

14,290. He need not have been Chief Justice of the High Court, but a Member of the High Court?—Yes.

Archbishop of *Canterbury*.

14,291. Having regard to the quotation from the Act, governing the constitution of the Judicial Committee, I take it you say that that is a valuable example of the importance of conven-

tions in this country as apart from statutory provisions?—That is so.

Lord *Peel*.

14,292. I hope you will not take it that every Member of this Committee objects to a non-barrister being made a Member of the Federal Court. I think it is high time that such posts were not confined to the legal profession?—I do not like the idea of drawing a distinction between the qualifications of one kind of Judge and another when they have both the same kind of service in the same Court.

Sir *Hari Singh Gour*.

14,293. There is one last question I should like to ask. According to the scheme of the White Paper and of the Memorandum there will be first a Federal Court and then a Supreme Court?—Yes.

14,294. It may take some time before the Federal Court is established?—Before the Supreme side of the Federal Court is established; it may or may not.

14,295. In the meantime are you giving the Indian Legislature any power to establish a Court? Some of the functions of the Supreme Court for the disposal of cases, for example the judicial control of the Income Tax law, for which a Bill is now pending in the Indian Legislature?—I am not fully conversant with the provisions of the Bill. What does it do?

14,296. It provides for an independent tribunal to dispose of certain cases, and the Government have accepted the principle of the Bill to that extent, the Bill has gone to a Select Committee, and it is proposed to appoint two Judges having an All India jurisdiction, the intention being that these two Judges will in course of time become part of the Supreme Court. That is the intention?—There is not anything in the provisions to stop a proposal of that kind going on.

14,297. My suggestion was that if you gave the Indian Legislature the power immediately to establish a Supreme Court independently of the Federal Court, that would give the Indian Legislature power to establish a Supreme Court for that purpose?—I should not

like offhand to give an answer to a question of that kind, because I am not quite clear in my own mind as to how these Income Tax appeals would fit in with the other appeals, but if Sir Hari Singh Gour would like to have a talk with the experts at the India Office at any time and he will let me know, we could go into this question with him.

Sir Hari Singh Gour.] Thank you.

Sir Phiroze Sethna.

14,298. On a point of order, my Lord Chairman, I know we are discussing the Federal Court and the Supreme Court proposals 151 to 167, but therein has been raised the question of the appointment or not of a civil servant to the Federal Court. Would it be competent for us to raise the point that it is an anachronism, in these days even to appoint Indian civil servants as judges of the High Court?—My Lord Chairman, I would hope very much that we should not get into this issue to-day. We did discuss it at some length the other day, but as a matter of fact before we get out of it Sir Malcolm would just add a word to what I have said, because it would complete my answer on the subject to Sir Hari Singh Gour. (Sir Malcolm Hailey.) I only desire to add a word, that the subject should not be treated as if it merely meant the possible appointment of Indian civilians to the Federal Court. What is contemplated is that anyone who has been for five years in a High Court will become eligible. A man might be appointed to a High Court who was not an Indian civilian at all but who had entered the Service as a sub-Judge and who had spent the whole of his life in the judiciary. He enters after passing his law examination and sometimes after a year or two as a pleader. After that he passes the whole of his life in the judiciary and is frequently appointed to a High Court. One has to take into consideration the claims of those officers also.

Archbishop of *Canterbury*.

14,299. Is there not some misunderstanding, because he would come under (e) of paragraph 153?—(Sir Samuel Hoare.) No, he would not. (Sir Malcolm Hailey.) He would come mainly under (a) or (c).

14,300. I thought Sir Malcolm said that such a person as he had in view would begin as a pleader in some subordinate Court?—He would begin as a sub-Judge.

Sir Phiroze Sethna.

14,301. Would not a sub-Judge be a pleader?—Yes.

Sir Hari Singh Gour.

14,302. Not necessarily?—Not necessarily.

Mr. M. R. Jayaker.

14,303. He would have to be at the Bar for about two or three years before he is appointed?—Not always.

Dr. Shafa'at Ahmad Khan.

14,304. There are examinations for sub-Judges?—Yes.

Sir Phiroze Sethna.

14,305. Paragraph 153 deals with the qualifications of the persons who can be appointed Judges of the Federal Court. Under (a) it is a person who has been for at least five years a Judge of a chartered High Court. In reply to Sir Akbar Hydari, you agreed, Secretary of State, to add the words "State High Court"?—(Sir Samuel Hoare.) I did not agree to any particular form of words.

14,306. I think he wanted to include "State High Court"?—Yes.

Mr. M. R. Jayaker.

14,307. But is not that covered by (b)?—Yes. It was because of that I was careful about agreeing to any form of words, but I did think at the time that it was probably covered by (b).

Sir Akbar Hydari.

14,308. Not quite?—Anyhow I will look into it.

Sir Phiroze Sethna.] Under (e) of the same proposal Sir Akbar asked if you would agree to include pleaders and advocates in the State High Courts. Have I your permission, my Lord Chairman, to ask Sir Akbar Hydari if these pleaders and advocates in State High Courts have the same qualifications as pleaders and

advocates of any British Indian High Courts ?

Sir Akbar Hydari.] Yes, I think so—certainly of my own Court.

Dr. Shafa'at Ahmad Khan.] In every State ?

Sir Akbar Hydari.] I am speaking only from what I know.

Sir Phiroze Sethna.] But you asked for the inclusion of State High Courts under (e).

Sir Akbar Hydari.] Yes.

Sir Phiroze Sethna.] It may be that the pleaders and advocates elsewhere may not have the same qualifications as pleaders and advocates of the State High Courts.

Sir Akbar Hydari.

14,309. The Secretary of State has said that he will consider that ?—Anyhow it would be quite incredible that a high appointment of this kind should be made of an advocate of very low training.

Sir Phiroze Sethna.

14,310. I admit that. You said this morning that you would consider the suggestion of raising the maximum age for a Judge to retire to sixty-five. May I know if you have any proposals to make to-day in regard both to the number of Federal Judges and their salaries, or would you leave it to the Committee to make a recommendation in their Report ?—Yes, either the Committee or Order in Council later on ; but quite definitely we hope that at the start there will not be a large number of Judges ; the number would be strictly limited.

14,311. Have you any idea of the numbers ?—It is very difficult to say until it is quite clear what duties are being imposed upon the Court. Perhaps I had better not give you a number. I could point to other Supreme Courts, and there Sir Phiroze would find that the number of Judges is very small—even in the Supreme Court of the United States.

14,312. As to the salaries, I take it that they will be higher than the salaries of puisne Judges ?—Certainly.

14,313. The amount has not yet been fixed ?—No ; but the amount would have to be sufficient to attract the very best men.

14,314. In the Third Report of the Federal Structure Committee, which appears in the Proceedings of the Second Round Table Conference at page 28, paragraph 61, with regard to all these points it was suggested that the matter might be referred to a small Committee for report at a reasonably early date. Was any Committee ever appointed at any date ?—I do not recall it reporting. I will look it up and see.

Marquess of Reading.] May I just deal with this matter ; I have been trying to look it up rather hurriedly ; but the Judicial Committee of the Privy Council really consists of those who have held high judicial office and Members of the House of Lords. The exact words are : “ The Judicial Committee of the Privy Council consists of the Lord Chancellor, the Lord President and ex-Lords President,” (They are not, of course, necessarily lawyers and do not sit.) “ The Lords of Appeal in Ordinary ” (those are the Legal Members of the House of Lords) “ and such other Members of the Privy Council who have from time to time held or hold high office within the meaning of the Appellate Jurisdiction Act.” If I may give an instance, having been Chief Justice, that makes me a Member of the Judicial Committee of the Privy Council and of the House of Lords ; but the appointments are not made from the Bar to the Privy Council. They are made from the House of Lords ; then when a Member sits as one of the Lords of Appeal in Ordinary he has then a right *ipso facto* to sit on the Judicial Committee of the Privy Council.

Lord Rankeillour.] But strictly, Lord Reading, the Lord President need not be a Member of the House of Lords.

Marquess of Reading.

14,315. I do not think so ?—(Sir Samuel Hoare.) He is not at the present moment.

Marquess of Reading.] He is specially mentioned. The Lord President and ex-Lord President have the right to sit, but in point of fact I have never known them sit.



Mr. M. R. Jayaker.

14,316. About paragraph 155, sub-paragraph (ii), Secretary of State, did I understand you to say in reply to a question by Sir Akbar that the Instrument of Accession would be included in this sub-paragraph ?—Yes.

Mr. M. R. Jayaker.] My difficulty is this : the sub-paragraph speaks of this : “any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a State”. I understand from the scheme of the White Paper that the Instrument of Accession would be entered into between the Governor-General at his discretion and the State. That is not the same as the Federation and the State, so if you intend to include them, the paragraph will have to be altered. It only speaks of agreement between the Federation and the State.

Sir Akbar Hydari.

14,317. I thought the definition proposed was under sub-paragraph (i) ?—It is so ; it is under paragraph 155 (i).

Mr. M. R. Jayaker.

14,318. “Any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder”; that is arising under the Constitution Act. I wonder how the Instrument of Accession can come under that wording, “rights or obligations arising under the Constitution Act” ?—It is intended that it should come under sub-paragraph (i).

Marquess of Reading.

14,319. It would have to be redrafted, would it not ?—We are not dealing here with a Bill, we are only dealing with the outline of a scheme.

Mr. M. R. Jayaker.

14,320. Yes ; then as to paragraph 118, about which you were asked by Mr. Zafrulla Khan, I do not quite see how the working of that paragraph will be. You say there : “In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made

limiting the period within which an Act may be called into question”. Then how will the time begin to run—from the passing of the Act ?—Yes, I suppose so.

14,321. But supposing no case arises for, say, 15 years about the particular Act because nobody has brought the matter up before the Courts, would you say the time ran from the passing of the Act and 15 years after the matter could not be raised ?—Our present intention is that the matter could not be raised indefinitely.

14,322. Although it is nobody’s fault that the question does not arise in the course of 15 years ?—The alternative is to leave this possible litigation open indefinitely. I should have thought that was a bad plan.

14,323. That is no hardship, because even now questions come up with reference to Acts which are 70 or 80 years old. They come up for the first time before a Court of law and the Court considers them. It is no particular hardship ?—You see, Mr. Jayaker, paragraph 118 is very strictly limited. “In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made limiting the period within which an Act may be called into question on the ground that exclusive powers to pass such legislation were vested in a Legislature in India other than that which enacted it.”

14,324. I am speaking of that. That means in the concurrent field, very likely ?—Yes.

14,325. But my difficulty is that no case may arise which brings this question before a Court for 10 or 15 years ?—We will look into Mr. Jayaker’s criticism. Offhand, it does seem to me very necessary to do something to minimise the uncertainty of law and the opportunities for litigation if we can.

14,326. The present condition is this, Sir Samuel, that the Courts have power to consider the question whenever it may arise. It may be 15, 20, or 50 years after the passing of the Act, and the Court is not debarred from considering that question ?—I am informed that a question of this kind cannot arise at all now.

14,327. There are several Parliamentary Statutes which have been modified by the Indian Legislature, and I remember several questions arising as to whether it was competent to the Indian Legislature to modify a Parliamentary Statute applicable to India?—(Sir *Malcolm Hailey*.) That is not quite the ground here. It is a contest between two authorities in India, and it is a very narrow ground on which it is sought to effect limitation.

14,328. In paragraph 156 you speak of the State Court. I suppose you mean a State Court of co-ordinate matters with the High Court of British India?—(Sir *Samuel Hoare*.) Yes.

14,329. That will have to be made clear?—Yes, it will.

14,330. Paragraph 158 says: "An appeal will lie without leave to the King in Council from a decision of the

Federal Court in any matter involving the interpretation of the Constitution Act." Will you take that with the next paragraph, paragraph 159: "There will be no appeal, whether by special leave or otherwise, direct to the King in Council." Am I to understand that this appeal to the King in Council from the decision of the Federal Court will arise in a matter which originally was considered by a State Court?—That is so.

14,331. That means in the last resort a question which arises in a State Court, which is of a constitutional character or falling within the extended jurisdiction, that you contemplate will be in the last instance decided by the Privy Council?—That is so, yes.

Mr. M. R. *Jayaker*.] I wanted that to be made clear.

*(The Witnesses are directed to withdraw.)*

Ordered, That this Committee be adjourned to to-morrow, 10.30 o'clock.

20th October 1933.

Present :

Lord Archbishop of Canterbury.  
Lord Chancellor.  
Marquess of Salisbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Mr. Cocks.  
Sir Reginald Craddock.  
Mr. Davidson.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Lieut.-Colonel Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS of LINLITHGOW in the Chair.

*Chairman.*] My Lords and Gentlemen, the Secretary of State after the meeting last night asked me to find out whether the Committee would be agreeable to break our programme to the extent of concluding the Secretary of State's evidence upon the Courts this morning before we proceed to discussion. I have not the least doubt that the Committee

would wish to oblige the Secretary of State in that regard. At the same time, it is a breach of the programme, and the Secretary of State has therefore been good enough to say that if any Member of the Committee or Delegate not present to-day desires to put questions on the Courts, he will be pleased to answer.

The Right Hon'ble Sir SAMUEL HOARE, HAILEY, G.C.S.I., G.C.I.E., and Sir C.S.I., are further

Bt., G.B.E., C.M.G., M.P., Sir MALCOLM FINDLATER STEWART, K.C.B., K.C.I.E., examined as follows :

*Chairman.*] We are continuing the Secretary of State's examination on the Federal and Supreme Courts, paragraphs 151 to 167.

says that the salaries and pensions, etc., will not be liable to be varied to his disadvantage during his tenure of office ?—That is evidently an error in drafting.

Mr. M. R. Jayaker.

14,332. I wish to call attention to paragraph 160 : "The process of the Federal Court will run throughout the Federation," and so on ?—(Sir Samuel Hoare.) Yes.

14,337. It is not intentional ?—We intended to have the same safeguards for both.

14,338. I find it repeated in paragraphs 152 and 171. It is not intentional ?—No.

14,333. I suppose the same procedure will be followed in the case of British India and the Indian States ?—Yes.

14,339. Then about paragraph 170, the last line, would you still consider the question whether you will not leave the rule unaltered which at present obtains, that the Chief Justice will always be a barrister. There is a very strong feeling in this connection in India that a man drawn from the Bar should be the Chief Justice. I do not want an answer now, but I would like you to consider it, having regard to the very strong feeling there is in the profession and among the public that the independence of the High Court is more likely to be maintained if you have in the place of the Chief Justice a man who will give a tone to the High Court and maintain the traditions of the High Court, and that these objects are more likely to be attained if you have a man drawn from the Bar ?—I have taken note of the view expressed by Mr. Jayaker and several other Delegates on the subject.

14,334. It will not be a question of the Viceroy being asked to enforce a decision in the domain of paramountcy. The Court will operate on another Court ?—Yes.

14,335. There was a tendency at one time to make a distinction between the process which will be operative in British India and the process which will be operative in the Indian States. I think it will be the same, one Court operating on another ?—Yes.

14,336. Then, with regard to paragraph 164, I find in clause 2 of that paragraph that you have not repeated there the provisions which you have provided for in paragraphs 152 and 171. Is that omission intentional ? If you refer to paragraph 152, the last line, it

*Marquess of Reading.*

14,340. Will you also bear in mind, when you are considering that suggestion especially, that you have reserved, as at present proposed, the right of appointment of civilians with the proper qualifications to the Federal Court, and that therefore the suggestion that you should have a trained lawyer as Chief Justice may have some added effect? I only want you to bear that in mind?—Yes. I feel sure we must treat the whole of this question as a single whole.

*Mr. M. R. Jayaker.*

14,341. About paragraph 175, "the Federal Legislature will have power to regulate the powers of superintendence exercised by High Courts over subordinate Courts in the Province." I believe it is your intention to have in the new constitution a provision analogous to section 107 of the Government of India Act?—Yes. I do not want to refrain from giving an answer to Mr. Jayaker's question. I would point out that paragraph 175 is outside the chapter with which we are dealing, but, in order to avoid waste of time, I can tell him that that is our intention.

14,342. I just want to ask two questions on your memorandum?—Yes.

14,343. In paragraph 5, you say: "In paragraph 162 there is no intention to give the Federal Court any power of control over the High Courts of British India such as the High Courts themselves possess over subordinate tribunals in the Province." I follow that, but I suppose it is your intention that within the spheres of its being a Court of Appeal, it will exercise control and supervision over the High Courts as Courts from which appeals come to that Court?—Controlling and supervision has, so far as I remember, a rather technical meaning. I am not quite sure what it is that is in Mr. Jayaker's mind.

14,344. For instance, in support of an appeal from the High Court in certain events it must have the power of calling for the record. It must have power of control of the procedure of the High Court so far as appeals are concerned?—Yes.

14,345. That supervision and control which is limited to the proper exercise of its functions as a Court of Appeal?—Mr. Jayaker means purely for the Court of Appeal?

14,346. Yes; I am not speaking of control like the one that the High Courts have over subordinate Courts?—No.

14,347. But being a Court of Appeal and a superior tribunal, there ought to be some nexus established between the High Court and this Court?—Yes, I agree.

14,348. Then about paragraph 8, where you mention your proposal of staffing the Supreme Court as a side of the Federal Court, I just want to know one or two details. I suppose in the Constitution Act you will have all the essentials of the scheme enacted with permission to the Federal Legislature to bring them into operation whenever they think it desirable?—Yes.

14,349. The essentials of the scheme will be contained in the constitution?—Yes.

*Sir Akbar Hydari.*

14,350. Will that provide that the Court of Criminal Appeal would not be allowed to come in?—Yes; it would be upon the lines of the memorandum.

14,351. Would it allow a choice to the Federal Legislature for British India to have a Federal Court separate and a Supreme Court both for Civil and Criminal Appeals as in the White Paper, or do you definitely limit the choice in the Federation Act to having only a Supreme Civil Court division added to the Federal Court and having an absolutely separate Court of Criminal Appeal?—That is the general line in our mind, namely, the line set out in the memorandum.

14,352. You would not allow the alternative to the Federal Legislature or to Parliament that if they desire they could have the Supreme Court on the lines of the White Paper; that is the Supreme Court division and the Federal Court absolutely separate?—I think it is very difficult to put alternatives into an Act of Parliament. I would not like to say that anything is final. The Committee no doubt will want to consider this question further.

14,353. Yes?—But our present plan would be to put one scheme into the Act.

14,354. We are much more in favour, as you know, Secretary of State, of having the Federal Court absolutely by itself?—Yes.

14,355. And we would agree to having the other Bench, the Supreme Civil Court Bench, with hesitation?—I see.

Marquess of *Salisbury*.] Will Sir Akbar mind saying why they would so much prefer the other plan?

Sir *Akbar Hydari*.] Our reason has been that, in the first place, we want a Federal Court to consist of judges who are really of outstanding merit, and the number of such judges, as you may readily understand, is very limited. The smaller the number the more select will be our choice, and then, secondly, the judges on the Civil Court side will have to decide cases from British India, and, therefore, they will be judges who have had more experience of British Indian work. Looking at human nature as it is, they will come with a bias or a certain mentality of British India being predominant, whereas in the Federal Court we want a number of judges who are there selected actually with a view to constitutional questions and holding the scale even between all the units of the Federation.

Marquess of *Salisbury*.

14,356. Thank you?—Sir Akbar will no doubt keep in mind the risk of keeping the two quite separately, a risk that has been very much emphasised to me by the experts, namely, that if you have these two separate Courts, almost certainly they will get into conflict with each other.

Sir *Akbar Hydari*.] I am not sure whether that cannot be provided for in two ways: In the first place by allowing the Chief Justice of the Federal Court to permit judges of this Court to sit on the Supreme Court, but not *vice versa*, and, secondly, whether (I do not know; I am a layman, but I put it to you for investigation) you cannot arrange that the Chief Justice of the Federal Court might function also as the Chief Justice of the Supreme Court?—I think I know Sir Akbar's position. Of these two alternatives he prefers one, but he does not

go so far as to say that the other is impracticable.

14,357. No. If that is adopted, then I would like that the references should be in the way which I have stated?—Yes.

Sir *Austen Chamberlain*.

14,358. If Sir Akbar Hydari's suggestions were followed in their entirety, would there be a very great distinction between the two Courts and the two sides of one Court, if the Chief Justice presided in both and a considerable proportion of both were the same individuals?—I would have thought myself there would be very little difference, speaking as a layman.

Sir *Akbar Hydari*.] May I say that the difference would be this, that the judges of the Federal Court would be small in number whom we would require (about five or so), and they would be selected specially for that purpose, and nothing else, and they might be allowed to sit and hear appeals, but not the large number of judges that you would require for the other division. They would be selected with reference to the work which they are going to do, and they might be reinforced by judges from the other side, but not *vice versa*. That is the difference.

Marquess of *Reading*.] It is rather drawing a distinction between the type of Judge that you would get for the two Courts when they are both to be of a Supreme Court. I do not want to discuss it now as it will come up for consideration, but I would suggest to Sir Akbar Hydari that there really is no substance in the end in that, because you get men of high judicial merit selected, as you must, for these places, which are the highest places on the Judicial Bench of India, and although it is true, I agree, that there would be fewer of the most outstanding merit, that would not prevent the Court being a very effective Court for some of the Judges who are really of greater merit than others. That must always happen.

Sir *Akbar Hydari*.] Is it not well known, even with regard to the High Court Judges, that one Judge is supposed to be a very good criminal Judge, another a very good civil Judge, and so on? I have that sort of point in view.

Marquess of Reading.] That has the advantage that when the Judges are sitting together they get the benefit of that one Judge's view of great experience and they apply their own minds to it. That is the present practice.

Mr. M. R. Jayaker.

14,359. In your Memorandum, speaking of the Criminal Court, will you also have in the Constitution Act the essentials of this Court in the form of a scheme?—Yes; I think we ought to.

14,360. Then you will leave it to the Legislature to bring them into operation in detail by its own vote?—Yes.

14,361. But the essentials will be in the scheme?—Yes.

14,362. My last question is on paragraph 9. You there suggest: "I doubt whether these fears are well-founded, if the right of appeal to the Federal Court on other than Constitutional or Federal matters were, in addition to limitations based on suit value, to be strictly limited (as I hope would be the case) to cases where some important point of law is involved" and so on?—Yes.

14,363. My difficulty is that you will have to make the jurisdiction of the Federal Court co-extensive with the present jurisdiction of the Privy Council. You are substituting this Court as a Court, in certain events, which will take the place of the Privy Council, and, therefore, you must make the jurisdiction of both the Courts co-extensive. You cannot limit it more?—I think that would be the case. I would like to consult my advisers on the point, but it appears to me that that must be the case.

14,364. This would make the jurisdiction of the Federal Court more limited than the present jurisdiction of the Privy Council, and I am asking whether it is possible and advisable to do so?—I will certainly consider that point.

Mr. N. M. Joshi.

14,365. May I ask a few questions, my Lord? My first question is on paragraph 155. According to that paragraph, private persons whose rights may have been violated have no right to go to the Federal Court?—They have no right to go direct to the Court. They go to the Court as a Court of Appeal.

14,366. I will give you an instance. As a Member of the Federal Legislature a man may have the right to introduce a Bill. It may be held that that Bill is *ultra vires* of the Federal Legislature. The man feels that he has a right to introduce that Bill, and he wants that Constitutional question to be decided by the Federal Court?—He must go first to his Provincial Court, and then eventually, if he wishes to appeal against its ruling, he goes to the Federal Court.

14,367. So the Provincial Court can take cognisance of the Constitutional matters of this kind?—Yes; certainly, in that way.

14,368. I put to you another difficulty?—I am not, of course, arguing whether the ruling of the Speaker of the Chamber might not come in. I am merely taking the point as put by you and assuming it is possible within the Parliamentary rules.

14,369. It is possible, you mean, that according to the Parliamentary rules the ruling of the Chair cannot be made a subject of litigation?—I think off-hand—this is raising a new issue—it would be a great mistake to bring questions of Parliamentary procedure into the Courts.

14,370. I gave that only as an instance?—Yes.

14,371. There may be other rights which individuals may like to have decided by the Federal Court. My second question is on paragraphs 156 and 158, where you give a certain privileged position to people who have got more money than others. According to these two paragraphs, you give a right of appeal to the Federal Court to those people who have got more money and whose disputes involve large amounts of money. My question to you is this: As a matter of Constitutional propriety and natural rights, all people should be equal in the eyes of the law. Why should you give a privileged position to people who have got more money than others?—We do not want to give a privileged position to anybody, but we do want to prevent the court being snowed under with an enormous number of cases. This is, generally speaking, the practice that is adopted everywhere. I think I should be right in saying that in every Federation there is some kind of restriction upon these appeals.

14,372. It is quite possible that in some cases the financial value under dispute is not easily computed. I will give you an instance. Take, for example, a case arising under some labour law; it is a question of hours of work affecting millions of people. If there is a dispute about an interpretation of a labour law affecting millions of people, although there may not be actual value in that dispute, really speaking the total amount involved, if you take into consideration the financial effect of the provision, may be very large?—That is a point that was raised by Mr. Zafrulla Khan yesterday and I said I would look into it again. I will look into it again.

Marquess of *Reading*.] Secretary of State, may I make one suggestion in answer to Mr. Joshi? We have very much the same kind of system here. I do not want to go into it in detail. You cannot help putting a limit of value upon rights of appeal, but whenever such a case as Mr. Joshi mentions occurs, and, of course, such cases frequently do occur, the remedy in it is in the leave of the court or in the leave of the Federal Court. That is how these matters are always determined in our courts in this country.

Mr. *N. M. Joshi*.] The point was, my Lord, that in one case where the face value of the dispute is large you can make an appeal without the leave of the court, but in the other case, where really the value to the community affected may be much larger, you require leave.

Mr. *Morgan Jones*.] Would not Lord Reading's suggestion add to the expense? Applying for the leave of the court means added expense.

Marquess of *Reading*.] I should have thought not because, at any rate, from experience of the courts here, when you get a question, especially a labour question, the amount involved in it may be small for the particular individual who is suing, but it may, of course, affect a large number of men, or may be a very important question of right. The answer to it always is that the Court gives the leave for that reason and there is no necessity for any further expense. I am speaking, naturally, of the courts in this country, and I have no doubt that there would be exactly the same system in India, where the Judges conduct their cases as we do here.

Dr. *B. R. Ambedkar*.

14,373. Secretary of State, I just want to ask one question about paragraph 155. I do not understand the distinction that seems to be made there. I find on reading paragraph 155 that you make a distinction in the matter of the exclusive original jurisdiction of the Federal Court on the basis that where the parties to the dispute are as there mentioned in sub-clauses (a) and (b), the exclusive original jurisdiction is given to the Federal Court, but the Federal Court cannot have an exclusive original jurisdiction if the parties are private individuals. Now the question I would like to ask is this. The issue in both cases is the same, namely, the constitution issue involving the interpretation of the Constitution Act. What I do not understand is this. Why there should be this distinction in the matter of an exclusive original jurisdiction of the Federal Court based on parties when the issue is the same?—I think this is what usually happens with Federal Courts that the original jurisdiction is jurisdiction between units, and it is in the appellate jurisdiction that the individual comes into it as of right.

14,374. I mean, if the intention is that where, for instance, the interpretation of the Constitution Act is involved, the matter should at once go to the Federal Court, then I think there can be no distinction made whether the parties are parties which are units of the Federation or of individuals?—I would have thought that this was one of the necessary working conditions of a Federal Court. I think if it had original jurisdiction in individual cases as well it would be entirely swamped with cases.

Dr. *B. R. Ambedkar*.] But, all the same, the issue in both cases would be the same, namely, the interpretation of the Constitution Act. I can quite understand the distinction being based upon different causes of action, but where the cause of action is the same, or rather the plea is the same, namely, that there is a breach of the constitution, I do not see any justification in making this distinction based upon units and parties.

Marquess of *Reading*.

14,375. Is it not rather for the purpose of preventing numbers of applications

which might be made by individuals for all kinds of cases ? They would be legitimate in one sense under the court, but, Secretary of State, you limit this original jurisdiction under the constitution to disputes between the units ?—That is so.

14,376. Leaving it for agreement after the Constitution Act for any individual. That is the limitation you place upon it ?—That is so, and I think Lord Reading would agree with me when I say that this is the regular basis upon which a Federal Court works.

Mr. M. R. Jayaker.

14,377. There is another reason for it in support of this, that if you put under Proposal 155 litigation between a private party and a State or a Province you will thereby drive the private party in every case to seek his relief in the Federal Court ?—Yes.

14,378. And it will be more easy to file the suit in a Provincial or State Court where he is residing rather than in every case to go up and file a suit there. It would be far more expensive to do that ?—I should have thought that certainly was so. It is really bringing justice to the man's door.

Sir Manubhai N. Mehta.

14,379. And the man must, first of all, exhaust his remedy in his own court before going to the Federal Court ?—Yes.

Dr. B. R. Ambedkar.

14,380. Now there is another question which I wish to ask the Secretary of State, and it is this. I do not find any provision in the White Paper about it. Do not you think, Secretary of State, it is desirable that there should be provision made allowing private individuals to sue for a declaration that a particular act is unconstitutional, although he is not seeking any specific relief ? I mean, all the cases that you have provided for I find are cases in which some specific relief is asked for. It may be desirable that a private party, in order to safeguard his future, may like to test at once if he has any doubts whether the particular proposal made by the Federation or by a Province is unconstitutional so that he may safeguard his position for the future, although, at the moment, when he is filing the suit for the proceedings, he has

no reason to seek any specific relief ?—I have some hesitation, not being a lawyer, in answering a question of that kind, but if I may give off-hand the answer of a layman I would have said that it was extraordinarily difficult to allow a general right of that kind without any specific issue affecting the individual.

Marquess of Reading.] May I make the observation that what you have said is really the law as it is applied in this country. We do not allow these applications of what are called *Qia timet*, that is to say, merely a case of difficulty hereafter to get a declaration when there is no substantial dispute and the moment there is a dispute, it can be done. We never allow it, and I do not think they do in India.

Sir Hari Singh Gour.] No cause of action ; no right of suit.

Mr. Zafrulla Khan.] Indeed there would be very great difficulties if such a provision were inserted in the Constitution. You would start a million suits being instituted in India the moment the Act was passed.

Dr. B. R. Ambedkar

14,381. I do not know whether everybody will exercise his right ?—It would be an excellent affair for the legal profession in India.

Lord Rankeillour.

14,382. Did I understand you to say that you could go to the Provincial High Court at present and get an interpretation of the Constitution Act for what it is worth without any suit or action ?—No, I said exactly the opposite.

Lord Rankeillour.] I thought it must be so. I understood you wrongly.

Sir Hubert Carr.

14,383. There is only one question I want to ask. Is there anything in the White Paper to allow a subject of British India to bring a suit against a State ? I mean is there anything under any of these Courts, the Supreme Court, the Provincial High Court or the Federal Court, by which that could be done ?—I am not quite sure what Sir Hubert means. Does he mean a case against a State, that is to say, the ruler of a State ?

14,384. Yes ?—No, there is not.



14,385. The question came up at the Round Table Conference?—I do not see how there could be unless the ruler of the State agreed to make himself amenable to a suit of that kind.

14,386. Is there any suggestion of trying to secure that agreement?—No, there is not, not in our proposals.

Mr. *M. R. Jayaker*.] Does he not make himself amenable by entering the Federation?

Marquess of *Reading*.

14,387. A sovereign does not, surely?—I would have thought not.

Mr. *Zafrulla Khan*.

14,388. Would it be possible under the White Paper proposals to institute a suit against the Government of a State?—I should like to look into this rather technical question. If I may, I would send Sir Hubert Carr an answer upon it.

Mr. *Zafrulla Khan*.] The case I have in mind is this: Supposing in future the Government of the United Provinces enters into a contract with a private person for the supply of certain material and there is a dispute over that. That person, of course, can sue the Government of the United Provinces; but supposing the Government of State A entered into a similar contract with a private individual, could a civil suit be instituted? The real difficulty in that matter would be that very often the ruler of the State is the Government of the State.

Sir *Hubert Carr*.

14,389. That is exactly the point I have in mind?—I should like to look into this point.

Sir *Akbar Hydari*.] Where would the cause of action arise? I mean, if the Government or the State entered into a contract about something in British India, then it would be a question, but not otherwise.

Mr. *Zafrulla Khan*.] You would not give the right of a suit to a contractor in Hyderabad.

Sir *Akbar Hydari*.] So far as we are concerned, we have got an Act that in such cases where there is a demand against the Government it is first of all submitted to our Advocate-General to consider whether we should file that case

or not. Then once we give leave he can sue.

Mr. *Zafrulla Khan*.] British India has exactly the same provision.

Sir *Manubhai N. Mehta*.] I know several States have exactly the same provision.

Mr. *M. R. Jayaker*.] I should like the Secretary of State to consider this question. You cannot sue an Indian ruler except with the consent of the Governor-General.

Marquess of *Reading*.] With very limited conditions.

Mr. *M. R. Jayaker*.

14,390. That is already so when there is no Federation, but when they come into the Federation and become a part of the Federation, does it not involve that they submit to all the obligations to which the Provinces submit, and if a Province could be sued by a private individual under the circumstances mentioned by Mr. *Zafrulla Khan* I wondered why any distinction should have been made between a State and a Province in that behalf after it has come into the Federation?—As I say, I would prefer not to give an answer upon a question of that kind this morning. I will look into it and take note of what has been said upon the subject.

Sir *Austen Chamberlain*.

14,391. If the Secretary of State prepares a note on the subject perhaps he would allow the Members of the Committee to see the note and not send it only to Sir Hubert, who asked the question, because it is a matter of general importance?—I will certainly see that the note is circulated to the Members of the Committee.

Lord *Rankeillour*.

14,392. May I ask the Secretary of State a question to clear up something that was said yesterday? I asked him yesterday what would happen if an appeal on an ordinary matter not apparently involving the Constitution went to the side of the Federal Court which we have called the Supreme Court side, and if when it got there a plea on a Constitutional matter was raised. I understood you then to say that it

would have to go over to the other side, but later on in answer to Lord Reading I think you said that all the Judges would have equal jurisdiction as it was all one Court. If that is so would not the ordinary Court of Appeal have power to decide an action even though a Constitutional point was involved?—No. I was contemplating that although the Court would be a single Court there would be these two benches—I think that is the right expression—and a case like that would be withdrawn from one to the other.

14,393. But only the point of law would be withdrawn?—Yes.

Marquess of *Reading*.

14,394. Do you mean in the Federal Court, Secretary of State?—Yes.

14,395. Withdrawn from one to the other?—Yes.

14,396. I rather understood you to say the opposite yesterday, at least if we are understanding one another. The point did come up yesterday, and assuming that you have the two branches composed of Judges of the Federal Court and then in the one branch which was dealing with what we may call the Supreme Court matters a Constitutional question came up, I understood that the point that was put to you then was, would that Court have to refer it to the other Court—that is the other branch of the same Court. I suggested to you, and I thought you accepted it, that it certainly would not, because every Judge of the Federal Court would be a Judge with the jurisdiction of a Judge of the Federal Court. Supposing four or five Judges are sitting trying what would not be purely Constitutional questions and a Constitutional question came up, they have the power because they are properly qualified Judges to decide that in the Federal Court and there need be no transfer. I thought you accepted that?—I think I accepted it in principle. I am not quite sure whether I accepted it in detail. What I have in mind is that the Federal Court would make its own rules for the conduct of cases of that kind, and I did not want to tie myself down too explicitly to the actual way in which they would deal

with those cases, but I did not want to say anything to imply that there was not a distinction between cases involving a Constitutional issue and cases that did not involve a Constitutional issue.

Marquess of *Reading*.] If I may say so, I quite agree with that. The only point that I was putting to you, and I thought you accepted it and do now, is that notwithstanding that you have the two branches each Judge of the Federal Court has co-equal jurisdiction with the other, that you do not limit it in that way, and that consequently, as so often occurs in Courts here, and I have no doubt in India, a question comes up which that branch was not constituted specially to deal with, but they deal with it because the Judges are Judges for that purpose although they are still in another branch; that is a matter that comes up constantly in the Courts here.

Sir *Abdur Rahim*.

14,397. It is the same in India, if I may say so; each Judge exercises the jurisdiction of the entire High Court?—I will certainly take note of what Lord Reading has said on the subject.

Sir *Akbar Hydari*.

14,398. That is what makes it more restricted?—That is why I was very careful not to restrict myself to any acceptance of the detail.

14,399. Having heard all this and especially what Lord Reading said about the possibility of having a common Lord Chief Justice of the two Courts, I withdraw that suggestion?—No, Sir Akbar, you must not do that. I have not gone so far as either to accept or to refuse the proposal with regard to details.

Sir *Akbar Hydari*.] What I said was that having heard what Lord Reading said about the consequence of having a common Lord Chief Justice of the two Courts, I withdraw my suggestion that the Chief Justice of the Federal Court might also work as the Chief Justice of the Supreme Court.

Marquess of *Reading*.] I will not say anything except that I have not said anything at all about the Chief Justice of the two Courts.

(*The Witnesses are directed to withdraw.*)

Ordered, That the Committee be adjourned to Monday next, at 5 o'clock.

6th November 1933.

Present :

Lord Archbishop of Canterbury.  
 Lord Chancellor.  
 Marquess of Salisbury.  
 Marquess of Zetland.  
 Marquess of Reading.  
 Earl of Derby.  
 Earl of Lytton.  
 Lord Middleton.  
 Lord Ker (Marquess of Lothian).  
 Lord Irwin.  
 Lord Snell.  
 Lord Rankeillour.  
 Lord Hutchison of Montrose.

Major Attlee.  
 Mr. Butler.  
 Major Cadogan.  
 Sir Austen Chamberlain.  
 Mr. Cocks.  
 Sir Reginald Craddock.  
 Mr. Davidson.  
 Mr. Isaac Foot.  
 Sir Samuel Hoare.  
 Mr. Morgan Jones.  
 Sir Joseph Nall.  
 Miss Pickford.  
 Sir John Wardlaw-Milne.

The following Indian Delegates were also present :—

## INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
 Sir Manubhai N. Mehta.

Mr. Y. Thombare.

## BRITISH INDIAN REPRESENTATIVES.

Dr. B. R. Ambedkar.  
 Sir Hubert Carr.  
 Mr. A. H. Ghuznavi.  
 Lt.-Col. Sir H. Gidney.  
 Sir Hari Singh Gour.  
 Mr. M. R. Jayaker.  
 Mr. N. M. Joshi.

Sir A. P. Patro.  
 Sir Abdur Rahim.  
 Sir Phiroze Sethna.  
 Dr. Shafa'at Ahmad Khan.  
 Sardar Buta Singh.  
 Mr. Zafrulla Khan.

The MARQUESS OF LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined.

*Chairman.*

15,363. Secretary of State, before you begin your evidence to-day, I understand there is a matter to which you would like to make reference?—(Sir Samuel Hoare.) There were three preliminary observations that I should like to make. The first observation is with reference to the Memorandum that I have circulated. Members of the Committee will see that it makes no new proposals. What it does attempt to do is to elaborate what is intended under Clauses 122 to 124 and to make our

object more precise. Secondly, I would venture to suggest to the Committee and the Delegates that we should restrict the examination this afternoon to the questions that directly arise from Clauses 122 to 124 and from the Memorandum that I have circulated; that is to say, I would suggest to them that we should not deal this afternoon with the question of the Fiscal Convention and tariff autonomy, a question which does not come within Clauses 122 to 124 at all. I have, however, received a communication from Mr. Jayaker and Sir Phiroze Sethna asking for further elucidation upon certain

points connected with the Fiscal Autonomy Convention, as a result of the evidence that was heard last Friday. I would suggest to you, my Lord Chairman, that the time for that further elucidation would be the moment when we reach, I think it is, Section 6 of your Agenda, namely, that head dealing directly with tariff questions. In the meanwhile I should propose, in reply to Mr. Jayaker's communication, to circulate a Memorandum on the subject to the Committee, a Memorandum that it may well be the Committee would desire to publish with the Proceedings in due course. I think also, subject to what Mr. Jayaker and Sir Phiroze Sethna say, it would be a good thing to circulate with the Memorandum the letter that they wrote to me raising a series of questions.

Those, my Lord Chairman, are the only two observations I wish to make before my evidence.

There is one further point, my Lord Chairman. I imagine that in the course of our discussions this afternoon both members of the Committee and the Delegation will constantly have to refer to the Memorandum that I have circulated, a Memorandum that to some extent takes the place of Clauses 122 to 124. That being so, I think it would be best if the Memorandum were circulated as a preliminary statement made by me to-day before my evidence.

*Chairman.*] Thank you. I take it the Committee is prepared to fall in with the suggestion of the Secretary of State. *The following Memorandum is handed in.*

November 3rd, 1933.

CONFIDENTIAL MEMORANDUM No. A. 68.—JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM. DISCRIMINATION (Paragraphs 122-124). THE OBJECTS IN VIEW.

MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.

1. The general principles upon which we have based our proposals in relation to Discrimination may be stated very shortly as follows :—

(i) S. 96 of the existing Government of India Act, reproducing in substance s. 87 of the Government of India Act, 1833, provides that

“no native of British India nor any subject of His Majesty resident therein shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any office under the Crown in India”

and Queen Victoria's Proclamation of 1858 contained well-known passages to the same effect.

(ii) In January, 1931, the Round Table Conference adopted the following resolution :—

“At the instance of the British commercial community, the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects”

and recommended that these rights should be regulated on a reciprocal basis.

2. Our proposals on this subject in paragraphs 122 and 123 of the White Paper were intended, broadly speaking,

(a) to invalidate certain classes of legislation with the object of giving general protection to all British subjects in India, whatever their domicile, against discriminatory legislation (paragraph 122), and

(b) by the same means to give a more specific protection (paragraph 123) on a reciprocal basis for British subjects domiciled in the United Kingdom.

Close examination has shown that it is difficult to make clear our exact intentions if they are expressed in the very general terms of paragraphs 122 and 123 as they stand. A clear statement of the case necessarily involves exposition in considerable detail; in particular, the attempt to deal, as the White Paper does, in the same sentences with both companies and individuals has resulted in some lack of clarity.

Further, the general method of presentation adopted in paragraph 122 is so wide in scope as to be likely, even with the provisos which are attached to the paragraph, to place undue restrictions upon the powers of the Legislatures. Again, the form of paragraph 123 might prevent the Indian Legislatures from imposing regulations, reasonable and necessary in Indian conditions, upon individuals and companies engaged in trade in India.

The purpose of this memorandum, therefore, is to set out with greater precision, but with no further change of substance than is involved in meeting the difficulties to which I have just alluded, the objects which we had in view in framing the proposals in the White Paper.

*General declaration as to British subjects.*

3. (i) It is proposed that the Constitution Act should contain a general declaration that no British subject (Indian or otherwise) shall be disabled in British India from holding public office by reason only of his religion, descent, caste, colour or place or birth, nor, on the same grounds, from practising any profession, trade or calling.

*Special provision for persons who are British subjects domiciled in the United Kingdom.*

(ii) As regards British subjects domiciled in the United Kingdom in so far as they are not covered by clause (i), it is intended, subject to what is said in clause (v),

(a) to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom, subject to the right of authorities empowered by any legislation to exclude or remove undesirable persons to exercise that power in respect of an individual, notwithstanding the fact that he is domiciled in the United Kingdom; and

(b) to provide a special form of protection for British subjects domiciled in the United Kingdom, in

respect of the following matters:—

Taxation*	} in British India,
Travel and residence	
The holding of property	
The holding of public office	
The carrying on of any trade, business occupation or profession	

against statutory disabilities based upon domicile, residence, duration of residence, language, race, religion or place of birth.

*Special provision for companies incorporated in the United Kingdom but trading in India.*

(iii) As regards companies which are or may hereafter be incorporated in the United Kingdom and trading in India, it is intended to prevent (subject to the provisions of any Immigration Law which may be enacted consistently with clause (ii), and to the special provision as regards bounties and subsidies of clause (vii) (2)), the imposition in British India of any discriminatory taxation\* or of any statutory disability upon any such company, if the incidence of that taxation or disability is based upon

the place of incorporation of the Company, or

the domicile, residence, duration of residence, language, race, religion, descent or place of birth of its Directors, Shareholders, or Agents or Servants.

*Special provision for companies incorporated in India.*

(iv) In the case of a company which is or may hereafter be incorporated in India, British subjects domiciled in the United Kingdom will (subject to the special provisions as regards bounties and subsidies of clause (vii) (2)) be deemed *ipso facto* to comply with any conditions imposed by law on the company in respect to the domicile, residence, duration of residence, language, race, religion, descent or place of

\*“Taxation” is intended to cover imports of all kinds, including, e.g., rates and cesses.

birth of its Directors, Shareholders, Agents or Servants.

*Provisions for reciprocity.*

(v) It is, however, intended to provide that if any restriction, disability or condition of the kind, and based upon any of the grounds, indicated in clauses (ii), (iii) or (iv), is imposed by the law of the United Kingdom (or by provisions having the force of law) affecting in the United Kingdom Indian subjects of His Majesty or companies incorporated in India, the provisions of those paragraphs will not apply to any Indian law imposing in British India the like restrictions, &c., based upon the same ground.

*Reservation of Bills which, though not in form, are, in fact, discriminatory.*

(vi) In addition, it is proposed that the Constitution Act shall require the reservation for the signification of His Majesty's pleasure of any Bill which, though not in form repugnant to the provisions indicated in clauses (ii), (iii) or (iv), the Governor-General (or Governor as the case may be) in his discretion considers likely to subject to unfair discrimination any class of His Majesty's subjects protected by those clauses.

EXCEPTIONS.

(vii) The provisions indicated above will be subject to two other forms of exception or qualification:—

*Savings.*

(1) It will be necessary to save, notwithstanding the provisions of clauses (i), (ii), (iii) and (iv)

(a) laws which exempt from taxation persons not domiciled or resident in India;

(b) laws in operation at the date of the passing of the Constitution Act (e.g., the Criminal Tribes Act);

(c) the due operation of the Governor-General's or Governor's special responsibility for the prevention of any grave menace to the maintenance of peace and tranquillity;

(d) the right to legislate in the sense indicated in the proviso to paragraph 122.

*Exceptions in regard to bounties and subsidies.*

(2) It is proposed that an Act, which, with a view to the encouragement of trade or industry in British India, authorises the payment of grants, bounties, or subsidies out of public funds, may lawfully require, in the case of any Company not engaged in India at the time the Bounty Act was passed in the branch of trade or industry which it is sought to encourage, as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of British India, or compliance with such conditions as to the composition of the Board of Directors or as to the facilities to be given for training of Indians, as may be prescribed by the Act.\*

In the case of companies engaged in India in the trade in question at the time the Subsidy Act was passed, the general provisions indicated in clauses (iii) and (iv) will apply; and such companies will be eligible for such grants, bounties or subsidies equally with Indian companies.

*Special provision for ships and shipping.*

(viii) While the foregoing provisions will go a considerable way towards safeguarding United Kingdom shipowners against discrimination in their Indian business, these provisions must be supplemented for the ships themselves. It is usual in all treaties relating to matters of commerce to specify not only individuals and companies but also ships, where it is intended to give rights in regard to matters of shipping and navigation.

There are, moreover, certain points which are definitely not covered by the general provisions outlined above, e.g., there is no provision safeguarding ships registered in United Kingdom ports. It is also desirable to secure the right of United Kingdom shipowners to employ in Indian trades officers holding United Kingdom certificates of competency, and

\*This proposal is intended to give effect to the recommendations of the External Capital Committee's Report, 1925.

to secure to such officers that they shall not be subject to discrimination.

For these reasons it is proposed that a provision on the following lines should be inserted in the Constitution Act :—

“Without derogation from the generality of the provisions as to discrimination, ships registered in the United Kingdom shall not be subjected by law in British India to any discrimination whatsoever, either as regards the ship or her officers or crew or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom.”

4. The proposals in paragraph 3 relate only to discrimination by legislative enactment, in which latter phrase is intended to be included action by any person or body exercising delegated legislative powers. It is intended to expand the phrase used in Paragraphs 18 (e) and 70 (d) of the White Paper to “the prevention of discrimination in matters affecting trade, commerce, industry or ships” and, by means of this special responsibility of the Governor-General and Governors, to give them such powers as are available to prevent discrimination by administrative action. It will be realised, however, that the provisions relating to legislative enactments in the sense just described are not intended to interfere with freedom of contract, or for example, that the stipulations relating to companies should in any way prevent persons desirous of forming a company from making in the Articles of the Company such provisions relating to their Directors, Shareholders, etc., as they think fit, even though those provisions may be contrary to the principles laid down in clauses (ii), (iii) and (iv) of paragraph 3.

5. It should be specially noted that the proposal in clause (ii) of paragraph 3 will not apply to British subjects domiciled elsewhere in the Empire than the United Kingdom, and, in particular, will not debar the Indian Legislatures from imposing conditions upon, or restricting, the entry of such persons into India. For the grant of protection for the citizens of any Dominion, if such is desired, India will be free to negotiate with that Dominion, and it is intended

that appropriate provisions should be inserted in the Constitution Act to the effect that a convention to this end concluded between India and a Dominion would operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom.

6. As regards professional qualifications, it has been proposed

(i) that at the least every person now practising a profession in India on the strength of a British qualification shall be entitled to continue to do so; and

(ii) preferably that the Constitution should provide that no law or regulations made in India for the purpose of prescribing the qualifications for any given profession shall have the effect of disabling from practice in India on the strength of his British qualification any holder of a British qualification.

I suggest that the Committee should consider quite separately the question of the medical profession on which I shall have something to say in the course of my evidence. As regards other professions, I see no need for specific provision in the Constitution to meet point (i), since the Governor-General and Governors would naturally withhold their assent from any legislation which purported to expropriate persons who have been qualified in the past. There are obvious difficulties which I have been unable to meet in conceding the second request as it stands. It is clearly reasonable that India should be in a position to require additional qualifications from new entrants to professions which are justified by the special needs of Indian conditions: for instance, it would not be unreasonable to stipulate in regard to pilots that, in addition to the usual sea-going qualification granted by the Board of Trade here, an applicant should be required to prove acquaintance with the particular tidal waters in India in which he proposed to practise as a pilot.

Marquess of Salisbury.

15,364. Secretary of State, I should apologise for the sort of questions that

I am going to try to put to you, but I know you will be the first to recognise that the subject is very complicated and that the complication is revealed in a very striking form in the Memorandum which you have been good enough to circulate?—Certainly I agree it is a very complicated question.

15,365. Therefore if I go over ground which you think is easily understood perhaps you will have some pity on the members of the Committee who are not so familiar with the subject as you are?—I hope Lord Salisbury and the Committee will also show a reciprocity of treatment towards me too.

15,366. I should just like to ask, so that the Committee might know, whether the Chambers of Commerce of the country have seen this Memorandum which you have circulated to us, because we shall want to know how it fits on to their evidence?—No, no one has seen this Memorandum except the members of the Committee.

15,367. Not even the Manchester Chamber of Commerce whose representatives were here on Friday last?—No, nobody. I can, however, say that we have had many discussions with representative people, and I think I am right in saying that upon the whole, apart from the details, they have been in favour of making the objects that we have in mind under Clauses 122 to 124 more precise, and that is what we have tried to do in the Memorandum.

15,368. All the Memorandum is important, of course, but the most material part seems to me to begin with paragraph 3. The first sub-paragraph lays down the general principle of equality as between a subject of His Majesty in India and a subject of His Majesty in the United Kingdom?—The general declaration covers all subjects of His Majesty everywhere.

15,369. Not in the Dominions; that is to be dealt with separately afterwards?—No; the general declaration covers every one.

15,370. But there is a special provision about the Dominions later on?—I think I would put it this way. I would say that there is a special provision about

British subjects domiciled in the United Kingdom.

15,371. When we come to consider the subject matter of discrimination it is dealt with in your Memorandum on its legislative side and on its administrative side?—Yes.

15,372. If I may, I will take the legislative side first. It applies, as I said just now, to British subjects in India and British subjects and Companies in the United Kingdom?—British subjects and companies trading, etc., in India, yes.

15,373. It is sub-paragraph (iii) of paragraph 3 which deals with the rights of British subjects in India other than Indians, and then paragraph 4 deals with British subjects and Companies in the United Kingdom. Let me put it in this way: The one deals with British subjects and British Companies, etc., domiciled in India, not Indians, and the other with British subjects and Companies domiciled in the United Kingdom, not Indians. My object, if I can do so, is to direct the Committee, with the assistance of the Secretary of State, to where we can find everything in looking through the Memorandum?—Paragraphs 3 and 4 deal with Companies incorporated in the United Kingdom or in India respectively, I prefer the use of the word "incorporated" to "domiciled." The lawyers tell me that "domiciled" is rather a dangerous expression sometimes.

15,374. "Domiciled" is a better word, of course?—Yes. The lawyers tell me that the term of art is "incorporated" rather than "domiciled".

15,375. The Secretary of State will forgive my mistake I think it would perhaps help the Committee if the Secretary of State could explain in a few words what is the difference of treatment between British subjects and Companies incorporated in India, legislatively I mean, and those incorporated in the United Kingdom. I see certain differences such as bounties, for example?—As a broad answer to Lord Salisbury's question I would say that the treatment is reciprocal in both cases, and that what is possible for the one is possible for the other. The basis of it is the basis of reciprocity of treatment.



Sir Austen Chamberlain.

15,376. Reciprocity between whom, Secretary of State?—Constitutionally, I suppose, between the two Governments.

15,377. No; we are dealing with Companies in paragraphs 3 and 4?—The basis of our proposals is this: We undertake that India will not take any action against a British Company that we here do not take against an Indian Company.

Marquess of Salisbury.

15,378. Is that the only distinction?—You asked me for the broad answer, Lord Salisbury, and that is the broad answer.

15,379. I mean there will be a difference as regards bounties; bounties might be given to the one and not to the other?—I understood Lord Salisbury in his question to exclude the question of bounties. That is why I said my answer was a broad answer. I would prefer, if he would, to deal with the bounty and the subsidy side of it separately.

15,380. Very well. That is perfectly fair. But I would call his attention and the attention of the Committee to paragraph (iii) of the Memorandum. There it will be seen that he says as regards Companies which are or may hereafter be incorporated in the United Kingdom and trading in India, "it is intended to prevent"—I leave out a few unnecessary words—"the imposition in British India of any discriminatory taxation or of any statutory disability upon any such company, if the incidence of that taxation or disability is based upon"—and then there are four heads, namely, the place of incorporation of the Company, the domicile, language, race, religion, etc., directors, shareholders, or agents or servants. Those would be the points upon which discrimination must not be based under that provision. Then if we come to (iv) which treats with the Companies incorporated in India, the phrase is that they are to "be deemed *ipso facto* to comply with" all the Indian laws. Now what I want to get clearly before the Committee is what is the difference between those two things: between the *ipso facto* compliance and the long list of heads which apply to the

Companies incorporated in the United Kingdom?—The object of (iv), Lord Salisbury, is to enable a new Company to be set up, against which discrimination would not be permissible. (Sir Malcolm Hailey.) The effect of (iv) is that as regards Companies incorporated in India or hereafter to be incorporated in India, if any Statute or Regulation applies to All-India Companies which is based on domicile, residence and the like, then it will be held that the fact that persons are British subjects entitles them to assume that they already comply with those requirements.

15,381. That is under (iv)?—Under (iv).

15,382. And with regard to (iii) the real truth is that the list of subjects recited in (iii) seem to me so inclusive that I cannot understand how the words "*ipso facto*" in the second paragraph add anything to them?—(Sir Samuel Hoare.) Surely this is the point, Lord Salisbury. The point of (iv) is to safeguard new Companies and to prevent the disabilities being inflicted upon new Companies that would not be legitimate in the case of old Companies.

Sir Austen Chamberlain.

15,383. Secretary of State, is that answer quite correct, because the first sentence of (iv) runs: "In the case of a Company which is or may hereafter be incorporated"—it therefore applies to a Company already incorporated in India as well as one which may be incorporated in India in the future?—Yes; it safeguards, though, both types of Companies so far as the future is concerned. In the case of an existing Company some new condition might be imposed in India. In that case, if it is a British Company, the British Company cannot be disabled from the fact that it does not comply with that new condition.

Marquess of Reading.

15,384. May I ask one question upon that, Secretary of State? Would you mind looking at paragraph (iv)? Is not paragraph (iv) intended to deal with British subjects domiciled in the United Kingdom who may be acting in relation to a Company which is or may be incorporated? Is not the purpose of that

to show that these British subjects domiciled in the United Kingdom will be deemed *ipso facto* to comply with any conditions of the law of the country?—(Sir Malcolm Hailey.) We have to consider two types of Company. There is the Company domiciled in Great Britain which, may be trading in India. Now the Indian legislature could not lay down with regard to that Company that it should be constituted in any particular way. All you can lay down with regard to a Company that is incorporated in the United Kingdom and is trading in India is that it should pay some extra taxation or that it should be subject to certain disabilities on account of the composition of its shareholders or Directors, and that is provided for in (iii). (iii) merely provides that if a Company is incorporated in the United Kingdom and trades in India, such a Company should not be subject to any disabilities on account of the fact that it is incorporated in the United Kingdom or that its shareholders are of a particular composition or class or nationality. Then we have to consider also the Companies which are purely Indian Companies, that is to say, Companies incorporated in India itself, and there the Legislature might lay down particular terms of incorporation which might inflict hardships upon certain Companies, that is to say, it might declare that the terms of incorporation should be such that you must have a certain proportion of shareholders or a certain class of Directors. Now the effect of (iv) is to say that if the Indian Legislature does lay down those rules of incorporation, which, of course, would apply to all Companies incorporated in India, then it shall be a sufficient compliance with those terms, that the Company shall be held to comply sufficiently with those terms as to domicile, residence and so forth if where the law lays down that they must be residents of India or the like they are domiciled in Great Britain; it has the same effect.

15,385. The *ipso facto* provision applies to British subjects domiciled in India?—Yes.

15,386. Not to the Company directly. Is it not for the purpose of protecting the British subjects who are domiciled in India and are either Directors or it may

be officials of the Company incorporated or to be incorporated in India, and the provision is that these British subjects shall be deemed *ipso facto* to have complied with the law relating to the Company. That is what the language implies. Is not that what is meant?—That is to protect the Company itself against any law which declares that the directors, shareholders and the like should be of a particular composition, and it is intended, therefore, to protect the Company.

Sir Austen Chamberlain.

15,387. Take a very extreme example in the hope that I shall get it clear. If, for instance, an Indian law declares (that, to be incorporated, in a Company of a certain type every shareholder must be resident in India, if he were a British subject domiciled in Great Britain, he would be held to comply with that condition?—Yes, and therefore that is intended for the protection of the Company itself.

Marquess of Reading.

15,388. But the "*ipso facto*" provision applies to British subjects domiciled in India?—Yes. And it gives them a recourse to the Company in consequence. Otherwise I suggest to you you cannot very well make sense of this provision, because clearly the words "*ipso facto*" apply to the British subject and not to the Company.

Marquess of Salisbury.

15,389. No. (iii) applies to the Company and No. (iv) to British subjects?—Both apply to Companies.

15,390. Under 3 (vi), there is a very proper reservation, where it is a case of substances and not of form, giving power to the Governor-General, is it not?—(Sir Samuel Hoare.) To reserve a bill.

15,391. Where he thinks it is likely to do a mischief which these provisions against discrimination are intended to prevent, if he thinks it is likely to do it, even though in form it does not do it, he must reserve the Bill?—Yes, when he thinks it is likely to subject to unfair discrimination any class of His Majesty's subjects protected by these clauses.

15,392. And it applies to the Governor as well as the Governor-General?—Yes.

15,393. There are certain savings, first of all, the proviso, in Proposal 122, are just mentioned?—Yes.

15,394. I do not know whether the Secretary of State would like to say anything about those proviso. It is at the end of the first paragraph in Proposal 122?—It is questions such as the alienation of land in the Punjab, and questions of that kind that have to be specifically mentioned, otherwise it would be said that we were discriminating against a particular class in the Punjab.

15,395. Those provisos, of course, ought to be very carefully studied by those who, unlike myself, are competent to deal with them. They are very technical and difficult. Then there is the question of bounties. That I think comes under paragraph 3 (vii), sub-section (2)?—Yes.

15,396. And in the case of bounties, there is a distinction drawn between existing businesses in India and future businesses in India?—Yes.

15,397. As far as I understand, there is to be no condition as to existing businesses, no new discrimination as to existing businesses, but as to future businesses, certain discriminatory conditions may be laid down?—Yes; we take as the dividing line the date of the Subsidy Act. Until a Subsidy Act is passed, there can be no insistence upon the kind of conditions set out in the Memorandum. After that we feel that it is a new chapter, and that it would be restricting the Government of India too closely to prevent its laying down these kinds of conditions for the Post-Subsidy Act companies.

15,398. In the future, compliance with future conditions may be imposed, may it not?—Yes; after the Subsidy Act is passed.

15,399. So that as far as bounties on future businesses are concerned, there will be, or may be, discrimination?—To the extent of the permissible conditions that we have laid down. Nothing would, of course, derogate from the Governor-General's special responsibility for safeguarding the position against discrimination.

15,400. We are speaking of legislation all the time, of course?—We are speaking of legislation all the time, certainly.

15,401. And under the Legislative provisions, he can always veto, if he likes?—Yes; the power of veto remains. Constitutionally also, under his special responsibilities under paragraph 18, he could intervene either in the field of legislation or the field of administration. There is no distinction drawn between his action in the one or the other.

15,402. At any rate, to start with, as regards businesses after the Subsidy Act, then there may be certain discriminative conditions imposed, namely, that the Company shall be incorporated by or under the laws of British India or compliance with such conditions as to the composition of the Board of Directors, or as to the facilities to be given for the training of Indians, as may be prescribed in the Act. All this may apply to companies in India as distinct from companies incorporated in the United Kingdom?—Yes; but they will, of course, as Lord Salisbury sees, apply to all companies in India, both British and Indian.

15,403. Yes?—I would also remind Lord Salisbury that that is, to some extent, a continuation of the existing procedure. There have been cases of subsidies given, and there have been cases when conditions of this kind have been laid down.

Marquess of *Reading*.

15,404. They were laid originally, I think, by a Commission of Inquiry in 1924?—Yes; Lord Reading will remember it was during his Viceroyalty, and the proposals that we make now are based very much upon the Report of that Committee which was called the External Capital Committee.

Marquess of *Salisbury*.

15,405. Then I turn for a minute to the provisions protecting companies against administrative discrimination?—Yes.

15,406. As I understand, those are going to be provided by a slightly developed drafting of proposal 18 (e) and proposal 70 (d). They are the two special responsibility paragraphs?—Yes.

15,407. That is so, is it not?—Yes, and the reason is that we found that phrase “commercial discrimination” without any addition to it, was not sufficient and that you have to define it more explicitly upon the lines that we suggest in the middle of paragraph 4 of the Memorandum. For instance, we are informed that it is very necessary to include ships by name.

15,408. It is intended to expand the phrase used in paragraph 18 (e) and paragraph 70 (d) of the White Paper too—and then follows the quotation “the prevention of discrimination in matters affecting trade, commerce, industry or ships”?—Yes. The object of the change is not to introduce into the definition any new feature, but to make it quite clear what it was intended to cover.

15,409. I would like to put a question to the Secretary of State of a more general character. There are no directory words to the Governor-General or to the Governor in the proposal as to how they are to exercise their special responsibility. The whole of the new Memorandum on the Legislative side deals with the matter in great detail?—Yes.

15,410. But when we come to the administrative side, which is really the more difficult of the two, the operation of the two clauses about special responsibility is left absolutely vague. I have no doubt that is intended by the Secretary of State, but I should like him to tell the Committee, if he will, whether he intends the Governor-General and the Governor to exercise those special responsibilities on the same lines as are provided for the Legislative side in the other part of his Memorandum; or is he leaving it absolutely vague?—Speaking generally, my answer would be Yes. We do not make a distinction between the two in our minds. As to the indefiniteness of the phrase “commercial discrimination,” and the particular way in which the Governor-General or the Governor is to deal with it, we have really dealt with commercial discrimination in exactly the same way as we have dealt with all the other special responsibilities under paragraph 18. We feel on the whole that it is practically impossible

to be very explicit and that the more explicit you become the more you create suspicions on both sides, both British and Indian, and the more likely you are to find in the long run that you may very well have tied the hands of the Governor in a way in which his hands should not be tied. But Lord Salisbury will see that this is one of the special responsibilities, and we deal with it just as we deal with the other ones.

15,411. I was going to say, of all the special responsibilities it will be most difficult to administer. Would that be true?—I do not think I would myself say so, but it is a matter of opinion really.

15,412. May I explain?—Yes.

15,413. I was very much struck by a passage in the Report of the Federal Structure Committee of the Third Round Table Conference which is very much in keeping with the evidence given by the Manchester Chamber of Commerce on Friday. “The real safeguard against administrative discrimination must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced where necessary by the special powers vested in the Governor-General and the Provincial Governors.” That really, I think, interprets the view of the Government in the White Paper, does it not?—I think I would certainly say (and I do not think anyone would contradict it) that the real safeguard with all these things is goodwill on both sides, but that does not in the least lessen the importance that I attach to specific safeguards as an insurance against anything going wrong.

15,414. But a specific safeguard which is the special responsibility of the Governor and Governor-General really will not be able to take the place of the good faith and common sense of the different persons engaged in it?—It is a very different type of thing, is it not? It is very difficult to compare the two; they are not really in *pari materia*. I do not think I can say anything more than I have just said, namely, that goodwill is what is going to make everything work, but accepting all that, I still say that supposing on one side or the other

goodwill is not forthcoming, then I think these powers can be very effective.

15,415. You think they can. Let us hope it will not take place, but let us put the case in which there will be a responsible Government, either in a Province or in the Centre, who would decide to exercise unfair administrative discrimination against British trade. I know the Secretary of State wants to exclude trade for the moment, so I will say against British Companies. Supposing there was such a case, does he really think paragraphs 70 and 18, even when they are amended in the way he hopes, will be really effective? There would be really nothing to be done if the administrations were intent upon unfair discrimination?—No; I should not at all say that. I am not quite clear what kind of discrimination Lord Salisbury means. It is very difficult to deal with a question in the general. If Lord Salisbury would give me specific examples of the kind of discrimination he has in mind, I think I could show him that the Governor-General's intervention would be effective.

15,416. I suppose it would be in the power of the Governments either in the Provinces or in the Centre to make it very difficult for a British Company to operate in India by administrative regulations, or even more subtly by instructing their officers to put difficulties in the way?—But what sort of administrative regulations? Here again I find it very difficult to convince Lord Salisbury, if I do not know what is the specific danger that he has in mind. Setting aside for the moment subtle propaganda, could he give me an instance of the kind of regulations that he has in mind?

Marquess of *Zetland*.] Might I put a case?

Marquess of *Salisbury*.] If you please.

Marquess of *Zetland*.

15,417. The sort of case I have had in my mind is this. Supposing a Provincial Government calls for tenders, it may be for the Public Works Department, for contracts for road making or building or anything of that kind, and supposing tenders are put in by both Indian and British firms, and

supposing that the British tender on its merits is quite obviously the best, but supposing it is not accepted by the Provincial Government, but a tender by a purely Indian firm is accepted, it seems to me that that is the sort of case of discrimination which might arise. Would the Governor in those circumstances be justified in calling for the tenders, examining them and saying 'No, on the merits of the case, it is quite clear that the tender put in by the British firm is the most advantageous to the Provincial Government' and for that reason, and for that reason alone, laying down that the British tender would have to be accepted?—Certainly, if it was a serious case. I could quite imagine that there might be doubtful cases, in which it was very difficult for the Governor to convince himself that the tender had been given we will say, on racial lines, but if it was a serious case, then I should say, it would be the duty of the Governor to intervene.

Sir *Austen Chamberlain*.

15,418. Suppose the Governor found that tenders were awarded to Indian firms, irrespective of price, I suppose you would hold that that was discrimination, and that the Governor should interfere?—I should think certainly, in a case of that kind, the Governor would demand an enquiry and would satisfy himself or not satisfy himself that there had been discrimination. If he was satisfied that there had been discrimination, he would intervene.

15,419. Take the case where tenders are not called for publicly, but where it is alleged that the Government, having both Indian and British firms well fitted to tender, calls for tenders from the Indian firms only. Would that be an occasion for the Governor to act?—I would certainly say it would be a case for the Governor to hold an enquiry and satisfy himself whether or not there had been discrimination.

15,420. If he found there had been discrimination, he would cancel the contract?—I could not hear.

15,421. Would it be within his power if, as a result of the enquiry, he found there had been discrimination, to cancel

the contract?—His power is unlimited and undefined.

15,422. Could he hold up the contract pending an enquiry?—Yes.

*Marquess of Salisbury.*

15,423. I think one can see that if the Government considered nothing but tenders from Indian Companies, the Governor might intervene, but, if it was a case not quite so blatant as that, but where the Indian Government obviously preferred on several occasions an inferior Indian tender to a better British one, do you think it would be practical, as a matter of fact, for the Governor to interfere?—I think it must depend upon what importance the Governor himself attaches to the particular case. I can quite imagine (in fact I admitted it just now to Lord Zetland) that there may be very difficult borderline cases, in which it would be difficult for anyone to say whether this or that tender had been accepted for this or that reason, but I am assuming that where it really was a case of serious discrimination the Governor would certainly have his attention called to it. These are not the things that happen without anybody knowing about them at all, and in that case, the Governor should intervene.

*Marquess of Zetland.*

15,424. The position of the Governor would surely be a very difficult one in a case of that kind, would it not?—That is a matter of opinion. We can all give an equally good opinion on a point of that kind.

*Mr. Zafrulla Khan.*

15,425. What would Lord Zetland propose on that?—Perhaps I might follow up Mr. Zafrulla Khan's question. I do not know what Lord Zetland would propose as an alternative?

*Marquess of Zetland.*

15,426. I beg your pardon?—I do not know what Lord Zetland would suggest as an alternative.

*Marquess of Zetland.]* I am not at the moment suggesting any alternative. I am discussing the proposals of the Government.

*Lord Hutchison of Montrose.*

15,427. Secretary of State, Lord Salisbury suggested just now that if tenders would put out to Companies domiciled in India, and the Government excluded companies from Great Britain, it would be a form of discrimination, but surely an Indian Government might well, in order to get over unemployment, offer tenders to Indian Companies and exclude British Companies?—I do not think anybody is assuming that in every public tender in India British Companies from here would necessarily tender. That does not happen now.

15,428. British Companies in India certainly, but Lord Salisbury's point rather was British Companies in Great Britain?—I did not take it to be so.

*Marquess of Salisbury.]* I did not mean that; I meant British Companies in India.

*Sir Austen Chamberlain.*

15,429. To get your position clear. Secretary of State, as I understand, you do intend to prevent, and believe you have taken the proper measures to prevent, improper discrimination between two companies incorporated in India on any ground of race?—Yes.

15,430. But you would not treat it as an improper discrimination, as I understand your White Paper, if the Indian Government, to encourage the growth or creation of an industry in India, placed an order with a company, whether British or Indian, incorporated in India, and, impartially as between those two, but excluded companies established elsewhere, even though they were established in the United Kingdom?—Certainly I should not regard that as discrimination.

*Major Attlee.*

15,431. May I follow that question up? Would you regard it as discrimination if a Provincial Government restricted its tenders to companies operating in its own Province?—I think it must be a case that must be judged on its merits, but my uninstructed view at the moment would be that it need not necessarily be discrimination any more than it is discrimination in the case of a great local authority here giving a preference to industry within its borders.

Mr. M. R. Jayaker.

15,432. Is the Secretary of State aware that at the present moment the policy of many Provincial Governments is to purchase their stores from manufactories established under their own supervision? For instance, the Punjab Government buys its stores from places which are under the direct supervision of the Punjab Government and in which those articles are manufactured?—I think that is so.

Dr. Shafa'at Ahmad Khan.

15,433. Other Provinces do the same, I think?—Yes; that is not the kind of discrimination that we are contemplating in these Proposals. That is something different.

Sir Akbar Hydari.

15,434. Then that would not be implied in making incorporation of companies Federal?—It all goes to show, Sir Akbar, that those cases must all be judged upon their merits, but, generally speaking, I can see no objection to a local government giving preference in certain cases to works of certain kinds. That is not the kind of discrimination that we are attempting to meet and to protect ourselves against in the Proposals.

Mr. M. R. Jayaker.

15,435. This is what you mean, Secretary of State, four lines below: "It is not intended to interfere with a freedom of contract"?—No, Mr. Jayaker, that is a somewhat different point. For instance, people coming into a partnership, or drawing up Articles of Association; it is all that category of cases that we have in mind there.

15,436. You do not mean to refer to the freedom of contract of a Provincial Government to enter into a contract with a manufacturing company on such terms as the Provincial Government likes. That would be included in it, would it not?—No. This was another category of cases that we had in mind.

Marquess of Reading.

15,437. I want to be clear, if I can, on the matter of so-called discrimination, which is to be permissive, that is to say, it applies only to companies incorporated

after there has been some law granting a bounty or a subsidy?—Yes.

15,438. As I understand what you propose here, the only exception to be made to your general rule against discrimination is that in regard to companies not yet incorporated in India, if they do become incorporated in India after the granting of the bounty and subsidy, and for the purpose of getting the benefit of that bounty or subsidy, then they may be made subject to these conditions, that is, putting it briefly, to the rupee capital, to the number of directors and also to facilities for training of Indians. Those are the only exceptions you make, are they not?—Yes, with this one reservation, the company need not necessarily become incorporated in India. The phrase we use is, "company trading in India."

15,439. Yes, but I thought one of the conditions was that it must be incorporated in India?—No, that is not so.

Sir Phiroze Sethna.] But if it is to get the benefit of any bounties.

Marquess of Reading.] If you look at the beginning of paragraph (2), where you are dealing with the conditions—?—It is for a new Company, Lord Reading.

15,440. I said so. I said a Company incorporated after the grant of a bounty or subsidy?—Yes, that is right.

15,441. That is what I was putting to you. Those three conditions apply?—Yes.

15,442. That, I understand, is only done for one purpose; that is to say, when in India there has been a grant of a bounty or subsidy which would apply to all Companies trading in India and incorporated in India, it is to prevent Companies coming and incorporating themselves in India for the purpose of getting a bounty or subsidy that these three conditions are imposed?—Yes.

15,443. I may remind you that that was the very question which was raised with the Manchester Chamber of Commerce and that was the question which was put to them, and they agreed that that was not unreasonable?—Yes, I was much interested in their answer; I was not surprised at it; but this, generally speaking, is the proposal that was made by the External Capital Committee, and

I think during the last two or three years in our discussions it has been generally accepted, anyhow by a great many people.

15,444. They gave these answers to Questions 15,270 and 15,271 quite definitely, that they did not regard it as unreasonable. The only other point that I wanted just to ask you about, because it is to some extent new, it this. It is with reference to ships and shipping. I do not want to go into it in any detail. The substance of your expansion of the meaning of the term "Discrimination" is so as to include ships and shipping and British sailors, from captains downwards, who are trading in those ships, so as to give them protection. That is the object of it, is it not?—The object of it is not to include any new categories. We had always intended to include shipping, but the lawyers told me (I do not know whether Lord Reading will confirm their view) that a ship has a curious entity in the field of law; it is neither a person nor a Company, and you can do things with ships that you cannot do with peoples and Companies; therefore you must mention ships by name.

15,445. You have really only expanded the language for the purpose of making clear the interpretation that must be put upon it; it is nothing more than that?—Nothing more at all.

Lord Rankeillour.

15,446. Only one or two points, Secretary of State. In paragraph 5 you say: "It is intended that appropriate provisions should be inserted in the Constitution Act to the effect that a Convention to this end concluded between India and a Dominion would operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom." Am I right in supposing that by such a Convention between India and the Dominion these paragraphs already relating to the United Kingdom could be embodied as a whole, but neither with addition nor subtraction; they could not make the position of a Dominion more or less favourable than that of the United Kingdom?—I should not like to say that an agreement between India and a Dominion must

necessarily take exactly this form. We were anxious, however, to put in an enabling clause to show that we should welcome the accession of Dominions provided that India and the Dominions agree upon these lines. It is more in the nature of a pointer than a definite condition that they can only accede upon this or that explicit term.

15,447. But would it be possible to give the Dominion or to give the United Kingdom preferential treatment in such Conventions?—I can imagine that India might make different agreements with different Dominions; but what we were anxious to show was that this was the pattern agreement so far as reciprocity goes, in our view.

15,448. You will not suppose I am suggesting it as at all likely, but take a possible instance. Could they make a reciprocal agreement with the Irish Free State to the detriment of the United Kingdom?—We are not dealing, of course, with tariff questions now, and offhand I cannot think of what kind of agreement of that kind they could make. Lord Rankeillour, if you take the basis of the agreement between Great Britain and India, the basis of full reciprocity, I do not see how any Dominion could get a better agreement than that.

15,449. No. I do not want to argue the merits; I was upon the construction of it more or less. The words say that a Convention might operate to make applicable to the citizens of that Dominion the provisions relating to British subjects domiciled in the United Kingdom. Those words on the face of them might be construed as meaning those provisions and no more and no less?—They could not mean that; it is not intended to mean that. It might mean less, but I cannot contemplate it meaning more.

15,450. In fact those words would exclude its meaning more?—No, the words would exclude nothing, but I cannot conceive of any agreement that would mean more.

15,451. I do not want to pursue that further. Then I have got a little difficulty in construing sub-paragraph (vi) of paragraph (2). Sub-paragraph (vii) begins by saying that "The provisions indicated above will be subject to two



other forms of exception or qualification"; that is, among others, sub-paragraph (vi) will be subject to two forms of exception or qualification?—Yes.

15,452. Then when you come to paragraph (2) it reads as follows—I am leaving out words which are in a sentence in a bracket: "It is proposed that an Act, which, with a view to the encouragement of trade or industry in British India, authorises the payment of grants, bounties or subsidies out of public funds"; then it says: "may lawfully require"—then I leave out other words—"or compliance with such conditions as to the composition of the Board of Directors or as to the facilities to be given for training of Indians, as may be prescribed by the Act." Now what I want to know is whether, supposing a Bill or an Act prescribing such compliance is deemed by the Governor-General to be contrary to sub-paragraph (vi) above, which is going to prevail?—Sub-paragraph (vi) is unlimited.

15,453. Sub-paragraph (vi) is unlimited and will certainly prevail over these words about compliance, etc.?—Yes, it will.

15,454. The only other thing I want to ask is this: Having regard to the great complexity of this subject, would it be possible for the Secretary of State to bring up in a proper legal draft the provisions embodying these proposals, before the Committee reports?—I should not like to give the pledge offhand, but I will do my best.

Sir Joseph Nall.

15,455. Would you refer to sub-paragraph (iii)? I think you have made it clear that that reference to the British subject was to avoid discrimination against a Company which happened to have any British resident or person domiciled in Great Britain on its Board or as a shareholder. Under this sub-paragraph (iv) such a Company having one or more United Kingdom subjects associated with it would be regarded as complying with Indian law. Turning to paragraph (2) as an exception, is it not the case that the bounties and subsidies to which paragraph (2) refers would be withheld in the case of a new Company or could be withheld in the case of a new

Company which did have one or two United Kingdom persons on it?—Yes, that could be so.

15,456. Therefore that would be a discrimination?—Yes. We have drawn attention to the exception that it would mean.

15,457. I take it that this paragraph (2) is explaining what it meant by proposal 124?—Yes.

15,458. Is it unreasonable to suggest that proposal 124 does in fact open up a new channel to discrimination?—No, it does not; it goes on with the present system. There are Companies now in India—I can recall one, a Flying Company, that receives a subsidy and in which conditions of this kind do exist.

15,459. That no United Kingdom resident should be associated with it in any way?—I would not say that, but that the capital should be a Rupee capital; the Company should be incorporated in India; the Directors would be such-and-such, and so on, just exactly as we do here with the Imperial Airways Company.

15,460. I quite appreciate the intention as indicated just now in answer to Lord Reading, but do these words not in fact enable a discrimination to be drawn between two new Companies, one of which may be wholly Indian; the other may be Indian in general but may in fact include one or two United Kingdom residents?—(Sir Malcolm Hailey.) The intention is that as regards new Companies all that the Legislature would say is that in order to earn a bounty or a subsidy you should have a certain composition of capital, that is to say, Rupee capital, and that your Directorate should be of a certain class. It would not extend to their being able to debar the Company from eligibility on the ground that they contain some proportion of British capital or a certain number of British Directors.

15,461. I appreciate that intention, but my point is that the Memorandum does not say so. Under the Memorandum paragraph (2) distinctly cancels the *ipso facto* provision in paragraph 3, sub-paragraph (iv), so far as bounties are concerned in the case of new Companies. It may be a mistake, but I put it to

the Witness that as the Memorandum is drawn and as proposal 124 is drawn they do in fact enable that discrimination as to domicile or birth to be enacted hereafter?—(Sir *Samuel Hoare*.) They do, and we accept that; and the Manchester Chamber of Commerce accepted it last Friday.

Sir *Joseph Nall*.] With great respect, I do not think the Manchester Chamber of Commerce witnesses last Friday understood this discrimination which I am endeavouring to indicate is now possible.

Earl of *Derby*.] No, I do not think they did.

Sir *Austen Chamberlain*.

15,462. As I understand, Secretary of State, if it is the case of a new company incorporated, not doing business in India before the Subsidies Act passed, the Subsidies Act might say that to earn the subsidy not only must the capital be rupee capital and the company incorporated, be incorporated in India, but that every shareholder must be resident in India or domiciled in India, and every servant and director of the company domiciled in India?—Sir *Austen*'s question was dealing only, was it not, with new companies after the Subsidies Act?

15,463. Yes?—As our proposals stand now, there could be discrimination of that kind.

Marquess of *Reading*.] Is that so? I am very anxious to understand it, because if it is it would make a very great difference. As I understood it, the only point of exception is as a condition of eligibility for the grant of subsidy or bounty, three conditions may be imposed, but none of those conditions imposes, first of all, that all the shareholders must be Indian; so far as I have understood, although I agree that there is no provision as regards the number of directors, I have always understood hitherto that the provision has been with regard to the number of directors a reasonable number, and certainly has never been held to include all the directors. I agree there is no condition of that kind. I thought it was going to be cleared up.

Sir *Joseph Nall*.] Would Lord Reading allow me to put it in this way?—The *ipso facto* provision in paragraph (3), sub-paragraph (iv), relates to the birth, colour, creed, and so on, of an individual. Paragraph (2) at the bottom of page 5 says that that shall not apply in the case of bounties to new companies.

Marquess of *Reading*.] I do not understand it to.

Sir *Joseph Nall*.] Or it need not apply.

Marquess of *Reading*.] I do not understand it so, because, if you look, the provision that we were referring to about the *ipso facto* provision is in the case of a company which is or may hereafter be incorporated in India, so, *prima facie*, it would apply to that. Then, of course, you get to what we call the exception clause; that is the one relating to the grant of bounties and subsidies, but the only provision with regard to that is as to the condition of eligibility for a grant, bounty or subsidy. To that extent it is an exception.

Sir *Austen Chamberlain*.] That exception is that all the directors are Indian and all the shareholders are Indian.

Marquess of *Reading*.] From the time this has been introduced there has been no question of all the shareholders being Indian.

Witness.] What we have in mind are the recommendations of the External Capital Committee which reported in 1925. I could have copies of it circulated to members of the Committee; but, if they will refer to it, they will find, on page 16, that these are the conditions that were recommended by the Committee, and these are the conditions we ourselves have in mind: (1) Reasonable facilities to be granted for the trading of Indians; (2) in the case of a public company that it should be formed and registered under the Indian Companies Act; (3) that it has a share capital, the amount of which is expressed in the Memorandum of Association in rupees; and (4) that such proportion of the Directors as Government may prescribe consist of Indians.

Sir *Austen Chamberlain*.

15,464. The Secretary of State will observe that he has omitted the qualifying

adjective "reasonable" from before "facilities." It may be only an oversight; and that there is nothing to say a proportion of the Board of Directors. He says they may make what rules they like about the composition of the Board of Directors?—Yes; I think that may be an error in drafting. In any case, Sir Austen will see that these conditions are not conditions in the air, but they must be specifically prescribed in the actual Subsidies Act.

15,465. Yes. I have been very much alarmed about the possible abuse of these subsidies in consequence of certain questions put in the proceedings before this Committee; and therefore I think it is very necessary that the Government should express their meaning precisely; and that we should have, if we can, the exact terms in which they mean to grant this liberty?—I will certainly take note of what Sir Austen has just said.

Sir Joseph Nall.

15,466. I do not want to prolong the proceedings; but I do want to ask the Secretary of State, finally, this: If (iii) and (iv) definitely mean that a person born or domiciled in this country is, for the purpose of the new company mentioned in sub-paragraph (iv) definitely to be regarded as complying with a provision relating to Indians, then it would seem that that (iv) *ipso facto* provision definitely has cancelled this sub-paragraph which says: "The provisions indicated above will be subject to two other forms of exception or qualification," one of which is that in relation to exceptions in regard to bounties and subsidies the provisions of sub-paragraph (iv) shall not apply. I do not want to pursue it, but I hope the Secretary of State will be good enough further to review this Memorandum, as apparently the intention of the Report he has just read to the Committee is not, in fact, referred to or embodied in the Memorandum?—We might make a reference to the Report of the Committee perhaps before we settle it.

Mr. M. R. Jayaker.

15,467. May I ask the Secretary of State whether the *ipso facto* clause by its terms means that it is subject to the

special provision as regards bounties and subsidies?—Exactly; that is what I have said.

Sir Reginald Craddock.

15,468. There is only one point I would like to put to the Secretary of State, because I do not quite understand what is covered exactly. I will ask him to look at paragraph 3, sub-paragraph (ii) (b) of the Memorandum. Hitherto the discussion has been chiefly on the effect of the bounties clause, but at the present moment, or when this Constitution Act is passed, will it be possible for the Indian Government to require the companies incorporated in the United Kingdom, sterling companies, to convert themselves into rupee companies? There are many sterling companies in England now who are trading in India in one form or another. Will it be possible for them to be required to convert their capital from sterling into rupees?—No; and I cannot see, even if the Federal Government wished to do that, how they could do it. If Sir Reginald Craddock will look at sub-paragraph (iii) he will see that any attempt of that kind would be *ultra vires*.

15,469. Would it be a statutory disability based upon domicile because an Indian Company incorporated in India would have rupee capital as a matter of course?—Anyhow, I think it is thoroughly well covered in the Memorandum. If it is not, it would be certainly covered in any Act of Parliament.

Miss Pickford.

15,470. If in any future Subsidies Act which would lay down certain conditions such as are outlined both in the Memorandum and in the White Paper, supposing one of those conditions were that all the directors had to be of Indian nationality, would not then that Act be in itself discriminatory?—I think it might be. It would depend upon the provisions in the Act. If it were, of course nothing derogates from the power of the Governor-General and the Governor to intervene in their field of special responsibilities.

15,471. Therefore, if it were held to be discriminatory, all the other protections as to discriminatory legislation would at once apply?—Yes.

Marquess of Salisbury.

15,472. I only want to ask the Secretary of State this question. He and I agreed how very complicated this matter was at the beginning. I am sure the Committee, if I may say so, would very much appreciate it if he could let us have the actual draft of the sort of clauses he contemplates—the bounty clauses, Lord Rankeillour has already suggested it to him?—Lord Rankeillour asked me a similar question, and I said that at some time or other I would certainly try to do so. I could not do it offhand.

15,473. Perhaps you would consider that, would you?—Certainly.

DEPUTY  
Sir John Wardlaw-Milne.

15,474. The questions I specially wanted to ask the Secretary of State are those which have been partly put by Sir Joseph Nall, and I understand that Sir Samuel is going to reconsider Clause (2), in which case I will not pursue that matter any further?—Yes; but do not let us talk about a clause here. We are dealing with a Memorandum, and I should like to make it quite clear that what we are trying to do in the Memorandum is not to set out a series of clauses of an Act of Parliament, but to show the Committee our intentions. Those being our intentions, we should then hope to put them into statutory form in due course.

15,475. I am sorry; I used the wrong word when I said "clause." If you are going to reconsider that question of directors and reasonable facilities, I do not want to carry the matter any further. I wanted, however, Secretary of State, to ask you a question regarding the reciprocal part of the Memorandum which is contained in sub-paragraph (v). I do not desire to raise any objection to it, except to ask you whether you have considered in exactly this form it is actually equal in its effect. For example, what is in my mind is this: Is it not possible that in this country it might be necessary, say, in the case of companies which make armaments, to stipulate that such companies making armaments, and at the same time perhaps making other kinds of steel or iron work, might have to be British companies domiciled in this country?—That would be a natural condition,

I suggest, to set up; but is it not possible that India might say that these companies, because this exists in Great Britain, should be barred from tendering for ordinary materials in India? I do not know whether it has occurred to you, but it seems to me there is a possible loophole there. I only suggest it?—I will take note of what Sir John Wardlaw-Milne has just said. I think it is a point my advisers have had in mind. It is not new to me, but I will keep it in mind.

15,476. I only ask for information, because I regret to say I am very ignorant about it, but I take it paragraph 5 is an entirely new proposal as regards the position between India and the Dominions?—Which paragraph?

15,477. I do not refer to immigrants from the Dominions so much as to the position of Dominion Companies, or companies trading with India domiciled in the Dominions. As I understand this, in future whether they will be allowed to engage in the trade of India will entirely depend upon the agreement between the Dominions and India?—The Dominions, of course, are equally entitled with any British Nationals to the general protection against discrimination and disability. In the case, however, in which Great Britain, from the fact of its long association with India is receiving for itself reciprocal treatment with India there we felt that it was a matter of negotiation between the Dominions and the Government of India as to whether they should receive the additional advantages of reciprocity or not. It is therefore for the Dominions to negotiate agreements with India either upon the lines upon which we are making this agreement or upon other lines.

15,478. But in each case, it would have to be a separate agreement?—Yes.

Mr. M. R. Jayaker.

15,479. May I point out that what you are doing in that part of the memorandum is in complete accord with the Report of the Second Round Table Conference at page 57?—That is so.

15,480. Where it is stated: "It will be for the future Indian Legislature to

decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject, of course, to similar rights being accorded to residents in India and to Indian Companies." You are nowhere departing from what was at one time the understanding at the Round Table Conference?—That is so.

Mr. *Zafrulla Khan*.] Except in one particular to which attention will be drawn?

*Sir John Wardlaw-Milne*.

15,481. I am not suggesting you are departing in any way from the Round Table Conference, but I was particularly interested in what was to be the position of the Dominions; and the Round Table Conference, if I may say so, with great respect, does not perhaps affect their views of the matter. I only wanted to know whether this was a new proposal?—I do not want to be pedantic about words. It is not a completely new proposal; it is a proposal that we have discussed a good deal within the last two or three years.

15,482. On paragraph 6, you mention a difficulty of which you give an illustration at the end, about prescribing additional qualifications for new entrants to professions; but does not the word "qualification" really cover your difficulty? If qualifications could be established, the fact of a local knowledge of some sort being required, whatever the profession, would operate equally with anybody who applied, would it not? The qualification clause appears to me to cover it?—The point in our mind was this: In certain cases, the British qualification would not be sufficient in itself. Take, for instance, the case of an accountant. It might be necessary for an accountant to have a certain knowledge of Indian Company Law. It would also be necessary for a pilot to have, not only a knowledge of seamanship, but also a knowledge of the tidal waters in which he was acting. It might also be necessary for a Mines Manager to have a knowledge of the Indian Mining Legislation. It is cases of that kind that we have in mind.

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*Sir John Wardlaw-Milne*.] I thought perhaps the basic qualification would cover all applicants and the rest would follow, but I do not press it. I see your difficulty.

*Marquess of Reading*.

15,483. May I ask a question upon that? I notice the words are very wide in paragraph 6, the paragraph to which *Sir John Wardlaw-Milne* has called attention. "It is clearly reasonable that India should be in a position to require additional qualifications from new entrants to professions which are justified by the special needs of Indian conditions." Does that language apply to the Bar? The language is wide enough to cover it?—As *Lord Reading* knows, the position with regard to the Bar, I think, is that no English barrister has the right to practise in India at all. He has first to be made an advocate and then he has to get certain other qualifications?—(*Sir Malcolm Hasley*.) The High Courts merely admit barristers as advocates who comply with certain conditions such as having studied in chambers. They do that under their own powers.

15,484. That applies to all Members of the Bar, or the Legal Profession. It is not especially applicable to the English Bar?—(*Sir Samuel Hoare*.) It does exactly what we have in mind here; it adds something to an English qualification.

15,485. It is not intended to do more than that; there have been questions discussed at considerable length about that. —I do not follow how that differs from the cases I have just given about the pilots and accountants, and so on. In each case, something more is required in India than would qualify the particular professional man here.

*Lt.-Col. Sir H. Gidney*.

15,486. It is not so in Medicine?—I was dealing with cases like those I mentioned.

*Sir Hubert Carr*.

15,487. Might I put a further question to the Secretary of State on that because it is of such tremendous importance to the British professional man in India,

and it seems to me, in regard to the additional qualifications, that what we should object to would be if Indian qualifications had to be gained when British qualifications had been granted for identical purposes?—I could not quite hear.

15,488. If Indian qualifications had to be gained for the identical purpose for which British qualifications had been granted?—Yes.

15,489. May I illustrate it?—The Memorandum takes pilots. To enter the pilot service, one requires a qualification from the Board of Trade?—Yes.

15,490. In addition they have to serve as leadsmen and gain their experience and become fully qualified pilots before they can handle a vessel. What we wished to guard against was that the Board of Trade original certificate which qualified them for the Pilot Service should not be accepted in India, but that some future Legislature might say: "Only those who hold an Indian Board of Trade Certificate shall be qualified for the Pilot Service"?—The practical difficulty is to find accurate language with which to carry out Sir Hubert Carr's intention. If he could help us in the way of finding a formula we should be very much obliged. What we have in mind is not the kind of discrimination, an example of which he has just mentioned, but the permission to the Indian Government to impose the additional necessary qualifications of which I have just ventured to give some examples.

*Sir John Wardlaw-Milne.*] That is why I ventured to use the words "basic qualifications."

*Sir Hubert Carr.*] We do not want to have to duplicate them in India if they have been gained in England.

*Lt.-Col. Sir H. Gidney.*] I speak subject to correction, but I believe I am correct in stating that at present the only certificate accepted by the Pilot Service in India and Burma is the Board of Trade Certificate in London and nothing else.

*Mr. Zafrulla Khan.*] What we are discussing is what may happen in the future.

*Dr. Shafa'at Ahmad Khan.*

15,491. It may be necessary to have additional qualifications?—I think that may be so.

*Lieut.-Colonel Sir H. Gidney.*

15,492. To follow up Sir Hubert Carr's question you come later on to reciprocity in examination?—I do not quite follow that point.

*Sir Hubert Carr.*] I have further questions on the professions when my turn comes.

*Chairman.*] I do not know whether you wish to go any further in that matter now?

*Sir Hubert Carr.*] No, not until my turn comes.

*Mr. Morgan Jones.*

15,493. May I ask you one general question in regard to these provisos, Secretary of State? Is there any precedent for these in connection with the Constitution Acts applied to other parts of the Dominions?—Offhand I could not say whether there was or there was not. I would imagine there was not, and I would say the reason why we include them in an Indian Constitution Act is due to the nature of the partnership between British and Indian trade over many years. The position is quite different as compared with that of any other Dominion, if you take the great British interests that have been created during the last 150 years.

15,494. As I see it, Sir Samuel, you provide in respect of two forms of taxation. You provide against taxation generally and against discriminatory taxation. Let me leave discriminatory taxation alone for the moment. Will you turn to paragraph 3? It is only discriminatory taxation.

15,495. Then perhaps I am entirely wrong in my reading of the position. If you look at paragraph 3, you will find in (ii) (b) (I will read the superscription first): "As regards British subjects domiciled in the United Kingdom in so far as they are not covered by Clause (i) it is intended subject to what is said in Clause (v) . . . . (b) to provide a special form of protection for British subjects domiciled in the United

Kingdom, in respect of the following matters", and then follows the matters, and the first matter is taxation. Then you define taxation, "'Taxation'" (we are told) "is intended to cover imposts of all kinds, including, for example, rates and cesses." Am I right in supposing that that means that a Britisher carrying on business in India but not domiciled in India is exempted in respect of taxation?—No.

15,496. I am glad to hear it?—No such luck for him. If Mr. Morgan Jones will look at the limiting words at the end of the Clause, he will see "against statutory disabilities based upon domicile, residence, duration of residence, language, race, religion or place of birth." That restricts the field of taxation.

15,497. I may have misread it?—It simply means you cannot tax a man in those respects more because he is a Britisher.

15,498. If that is the explanation I am very much obliged, but I confess I have read it over and over again, and that is the impression I got from it?—I am afraid that is perhaps inevitable in a Memorandum covering a wide field, but it is definitely our intention that it should be entirely restricted to the field that I have just described to Mr. Morgan Jones.

15,499. Thank you very much. That removes that point. On the point of discriminatory taxation, might I put a proposition like this to you, Sir Samuel? There are at this moment preferential rates given to British traders by the Indian Government. Is it not true that as a result of Ottawa, certain preferences were given? Is not that so?—Yes.

15,500. Suppose a future Indian Government came to the conclusion that it would be in the interests of India to have a system of complete free trade, that would mean doing away with the Imperial Preferences, would it not?—I am quite ready to go on with Mr. Morgan Jones with these questions and answers, but we did agree at the beginning of to-day's proceedings (I am not sure whether he was in the room at the time) that we would leave tariff questions to a separate discussion. Subject to what he may say, I think that

that would be the better course because there are a number of issues connected with the tariff question, of which these are some.

15,501. If the Secretary of State thinks that is a more convenient course, I will be glad to leave it. It is my fault, I dare say, but I really failed to understand the answer given to Lord Rankeillour a few moments ago. I do not quite understand the exact meaning of that last sentence in paragraph 5. As I understand it (I am giving my interpretation of it) it is open to the future Indian Government to arrive at a Convention with, shall we say, the Canadian Government in regard to their respective subjects?—Yes.

15,502. What is the effect of that last sentence upon such an agreement or Convention?—None, I would say.

15,503. What is the meaning of the words?—The meaning of it is that it is a means, more than anything else, of drawing the attention of India and the Dominions Governments to the advantage of making agreements of this kind, but we tie neither the Dominions Governments to attempt to make the agreement, nor do we tie the Government of India to make the agreement if the offer is made; it is simply an enabling proviso, and it may be that, having no statutory force, the reasons against putting it into an Act of Parliament are greater than the reasons for including it. There is something, however, to be said for putting it in, to show that we are contemplating the picture of the future as an Imperial picture, and that we are not ignoring the point of view of the Dominions.

15,504. Supposing the effect of such a Convention were to place the citizens of Canada, shall we say, in a position less favourable than the position of the citizens of this country. Does not the last sentence mean that in spite of that they will be entitled to the same provisions as relate to British subjects domiciled in the United Kingdom?—No. I would say that it does not mean that, but if there is any uncertainty about it, we will make it quite clear in any future draft that it does not mean that.

Mr. Morgan Jones.] Then I will not press that.

Lord Rankeillour.

15,505. On this, Secretary of State, do I understand from what you have now said that this is really a superfluous provision? You spoke of it as a pointer. Could they make such a convention without this provision?—Yes, I think they could; but I am not sure that I would use the word “superfluous”, because I did say there was an advantage in a clause of this kind in drawing attention to the Dominion position. Importance is attached to it by a good many people.

Marquess of Reading.

15,506. Would not the effect, Sir Samuel, be that, assuming they did enter into agreement which, substantially, was to the same effect as provided in the Constitution under these clauses, those provisions of the Constitution would be made applicable to them?—Yes.

15,507. It depends entirely upon their coming to an agreement?—Yes.

15,508. If they arrive at an agreement, they get the benefit of the statutory provisions in the convention?—That is exactly so.

Mr. Morgan Jones.

15,509. And, if they do not arrive at a convention, what is their position? Do you protect a citizen of the Empire outside the United Kingdom?—We protect the citizens of the Empire under the general protection of Clause 122; but we cannot guarantee to a citizen of the Empire the special advantages that arise out of a treaty of reciprocity.

15,510. So that actually (forgive me again, if I am wrong) the effect of these provisions is, first and foremost and, indeed, simply, to protect the citizens of the United Kingdom?—Yes, that is so.

15,511. And it is a matter for the citizens of Canada and Australia to fend for themselves?—Yes; upon this field. I have said already that they get the general protection under Clause 122, namely, that there can be no disability or discrimination imposed upon any subject of the Crown.

Dr. Shafa'at Ahmad Khan.

15,512. But it does not apply to those companies or persons which are at the present time operating in India?—No.

15,513. It only applies to future companies or person?—Yes.

Sir Austen Chamberlain.

15,514. Secretary of State, you provide that people domiciled in this country shall have a right of free entry in India, subject to ordinary treatment?—Yes.

15,515. You do not mean to say that your clause is wide enough to give free entry to India to the citizens of a Dominion which refuses free entry to Indians in that Dominion?—Sir Austen has put in the form of a question exactly what is in my mind and exactly what is the justification for drawing this distinction between British Nationals of the United Kingdom and Nationals of the Dominions.

Major Attlee.

15,516. Just one further question upon that. I am clear now as to the position with regard to the United Kingdom and the Dominions. How about the other parts of the Empire? There is no unrestricted entrance, is there, for people from other parts of the Empire, say, Kenya, for instance?—The protection is purely to the United Kingdom.

Sir John Wardlaw-Milne.] Purely?

Major Attlee.

15,517. Therefore I take it that it would be open to the Government of India to enter into negotiations, let us say, with any of the East African Colonies, and to make reciprocal agreements, presumably, through the Colonial Office in the same way as they do with the Dominions?—As Major Attlee says, through the Colonial Office.

Archbishop of Canterbury.] It would appear that they could not do it except through the Colonial Office in this country.

Major Attlee.] Quite.

Marquess of Reading.] Except by permission of the Secretary of State.



Sir Austen Chamberlain.

15,518. Secretary of State, I want to come back to the question of subsidies and the exceptions in regard to bounties and subsidies. The purpose of the exception is set out in the second line. The purpose is the encouragement of trade or industry in British India? I am quoting from Paragraph (2) of your Memorandum?—Yes.

15,519. Will you explain to me, that being the purpose, why you distinguish between existing companies and future companies? "For the encouragement of trade or industry in British India." I can quite understand that they must have the right to give a subsidy to a trader or company established in India and manufacturing there, for instance, and to refuse to another British trader who is manufacturing outside India; but why is it necessary on the ground of the date of their incorporation to distinguish between two British companies both manufacturing in India, or between an Indian company and a British company both manufacturing in India?—We have felt that a distinction ought to be made, for this reason, that existing companies have been working along existing lines for many generations, and that therefore you have got to be extremely careful in altering the conditions under which they are operating. It seemed to us therefore to be the fair thing to go to make the change when the Act is actually passed. A period of time elapses; they have warning of the new conditions; and it cannot be said that, having operated in India perhaps for many generations on certain lines, those lines have suddenly to be changed.

15,520. I am afraid I did not make my meaning clear. You would encourage industry in India by saying, "We will give a subsidy from a future date to one class of firm that manufactures in India but not to another class of firm that manufactures in India?"—I think Sir Austen will see that we have to take two sides of the picture into account: on the one hand the encouragement of Indian industry, and on the other hand the obligations, direct or indirect, that have grown up as a result of British companies operating in India for many generations.

15,521. I am not questioning the protection which you are affording to existing companies, but what I am putting to you is that if you say a subsidy may be given to Indian companies, that is to say with Indian shareholders only, to new companies only if they are Indian and not if they are British, even though both manufacture in India and increase trade and employment, you are making a distinction which does not bear out the purpose of your preamble?—We feel in the matter of subsidies the future Government of India must have a certain latitude. So far as I know, every Government in the world which has ever given any subsidies at all has made conditions of this kind. For instance, we ourselves have made almost exactly similar conditions in the case of a company that I was instrumental in forming at the Air Ministry, namely, Imperial Airways; there we make conditions about British eligibility and so on. I think it would be very greatly restricting the action of an Indian Government in the future if you tied its hand so tightly as really to give it little or no latitude in saying how its money should be spent. After all, the Government is voting money for this purpose.

Mr. M. R. Jayaker.

15,522. Is it not a fact, Sir Samuel, that at the present moment the Indian Legislature has the right of attaching these conditions even when giving bounties to an existing Company?—That is so.

Sir John Wardlaw-Milne.

15,523. Would Sir Austen allow me to ask a supplementary question? Is it not the case that all you are asking the British company to do is that if it wants the subsidy it must in fact establish a subsidiary company in India complying with the conditions that would apply to any Indian company that gets that subsidy?—That is the way it might work out.

Sir Austen Chamberlain.] What exactly does that mean? The subsidiary Company may have the necessary conditions with which it is to comply: (1) that it should be incorporated in India, (2) that its capital should be stated in rupees, and (3) that its Board of

Directors should consist entirely of Indians.

Marquess of Reading.] There is no such provision.

Sir Austen Chamberlain.

15,524. I do not say there has been such a provision, but I say that so far as this Memorandum which you have laid before us goes there is nothing to prevent that being made a condition?—I thought I had made it clear that what we intended was to act upon the lines of the Report of the Committee that I quoted earlier this afternoon.

15,525. I will put one final question. Is there no danger that the result of this provision, expressed as you have expressed it, may be to create a monopoly for existing Indian and British firms or Companies and prevent a new Company from starting? Take shipping: Would not this mean that no new British Shipping Company could ever get into the India trade if there was a subsidy attached?—No. Surely Sir Austen is really, if I may say so without offence, greatly magnifying this question. We are dealing only with Companies to which subsidies are given.

Sir Austen Chamberlain.] There is nothing more likely to draw a subsidy, I should have thought, than shipping; at any rate there is no trade in the world generally which is probably more subsidised to-day, is there? I do not want to exaggerate, but if you can show that I am exaggerating I shall be very happy.

Marquess of Reading.] May I suggest that all that would have to be done would be to form a subsidiary Company complying with the conditions, as is done now.

Sir Austen Chamberlain.

15,526. I do not know how that would apply to this?—But surely is not Lord Reading right? In a case of that kind it will be possible for a British Company to form an Indian subsidiary Company and to conform to those conditions. For instance, I am reminded (I had forgotten it until Sir Malcolm Hailey reminded me of it) that it is exactly what has happened in the last few weeks with Imperial Airways and the Indian Flying Company.

Mr. Zafrulla Khan.

15,527. Secretary of State, you have explained that except for the general provision in paragraph 3 (i) the subsequent provisions are based more or less upon a question of reciprocity and are confined to persons, British subjects domiciled in the United Kingdom or British Companies incorporated in the United Kingdom or in India?—Yes.

15,528. But that paragraph 3, sub-paragraph (i), gives to the extent to which it goes general protection to all British subjects. Can you give any reason why this is not also based upon reciprocity, and why it has been necessary to give this protection to British subjects domiciled in the Colonies or British subjects in the Dominions, whereas Indians admittedly do not enjoy these rights in the Dominions and the Colonies?—We have felt that this has always been one of the principles of Indian administration since the proclamation of 1858; beginning with 1833, then Queen Victoria's Proclamation in 1858, then the repetition of the Pledge in the Act of 1919, and we do feel that it would be a very retrograde step now to go back upon a consistent line of policy of that kind that has always been in operation.

15,529. Is there not this factor that, so far as the United Kingdom itself is concerned, British subjects from India are given the same rights which are given to British subjects domiciled in the United Kingdom when they go to India, and that therefore Her Majesty's Proclamation and other such general declarations did establish a certain amount of reciprocity, almost complete reciprocity, between India and the United Kingdom and that the same hope has not been realised with the rest of the Empire. You are making distinctions between India and the Dominions in other matters. Is there any real reason why that distinction should not apply over the whole field?—That is the answer I have just given, namely, that it would be contrary to all our policy now for a whole century.

Mr. Zafrulla Khan.] Very good. Is it consistent with your policy that in the future a British Indian subject should not be eligible for appointment,

let us say, to the Civil Service in Ceylon, but that a British Subject in Ceylon should be eligible for appointment to the Civil Service in India.

[Sir Phiroze Sethna.] And that is so to-day.

Sir Hari Singh Gour.

15,530. That is a fact to-day?—I would like to think about the reactions of that question. I do not off-hand know what is the position in Ceylon as regards the Civil Service; I would like to look into that, but, generally speaking, I should say, that apart from the general declaration, there ought to be an opportunity for India to make reciprocal agreements with the Dominions.

Mr. Zafrulla Khan.

15,531. That we accept, but paragraph 3 (i) would make it impossible for the Legislature or the Government of India to impose restrictions of the kind on British subjects from the Dominions and the Colonies which are imposed upon British subjects from India when they go to those Colonies and the Dominions?—I should have thought there the Government of India would have an opportunity of negotiating an agreement about questions of that kind. They have got, after all, a very strong lever in their power to refuse the right of entry.

15,532. May I put a specific point on that to you? Supposing you in England here recruited a South African British subject into the Indian Civil Service would it be open to the Legislature in India to pass a piece of Legislation which would stop his entry into British India?—I should not like to give an answer about a very *ad hoc* or *ad hominem* act of that kind, but would say certainly it would be possible for India to refuse the right of entry of the nationals of a Dominion.

15,533. Would not then this general provision under paragraph 3 (i) force the new Indian Legislature at the earliest possible moment to restrict or stop the right of entry in order that if the right of entry were left open these rights in paragraph 3 (i) should not be unrestrictedly open to British subjects from the Dominions once they have entered India because they are not open

to British Indians when they go to those Dominions. Would not you be forcing the Legislature to apply the greater restriction to begin with so that the smaller privileges that you want to confer should be kept out?—I do not think so, but it is a matter of opinion, and I do not see in any case a better way of dealing with the position.

15,534. You are aware of the position of British Indian subjects in South Africa in the matter of professions, trades and callings, are you not?—Yes.

15,535. Do you think either public opinion in India or the Indian Legislature is likely to view with equanimity a provision which compels them to give equal opportunities with their own nationals and British subjects domiciled in the United Kingdom, with regard to professions, trades and callings, to British subjects from South Africa?—I should still say that even if that were the case, I should not be in favour of going back upon the policy of the last 100 years, and starting within India itself a system of discrimination against particular nationals of the British Empire. I think a step like that would be a retrograde step.

15,536. But do you think that is consistent, or, rather, that what has happened in the past is consistent, that the Secretary of State for India has not insisted on, or, if he has insisted, he has not been successful in his efforts to obtain, equal treatment for Indians in the Dominions, and that he should, as the result either of his neglect or his failure to succeed in his efforts now insist that the present most inequitable position should be perpetuated by Statute?—I would not accept the stricture upon my predecessors. I would say that it had been a part of British and Indian policy in India over this century not to draw distinctions in India itself between one national of the British Empire and another, and it is upon that ground that I stand in making this proposal.

15,537. However restrictive might be the legislation or regulations in the Dominions themselves against India?—I would say in that case it is a matter for negotiation, always keeping in mind the fact that India retains this very powerful instrument of negotiation,

namely, the right to withhold the power of entry.

15,538. You would lay no restriction whatsoever upon the right of India to legislate, barring the right of entry, if they chose to do so, barring the right of entry of British subjects who were domiciled in the Dominions and the Colonies?—I am sorry. I did not follow exactly Mr. Zafrulla Khan's question. Will you repeat it?

15,539. My suggestion is this, that you do not propose any kind of restriction upon the power of the Indian Legislature to pass legislation barring the right of entry of British subjects domiciled in the Dominions or the Colonies?—They have a free right to do that under these proposals.

Mr. Zafrulla Khan.] No sort of restriction is required.

Sir Hari Singh Gour. . .

15,540. One such Act was passed in 1924?—I am not now dealing with the exceptional case of Police Cases and undesirable cases and so on.

Mr. Zafrulla Khan.] No. I suppose I must accept the position that any Legislature must, if they want to stop the smaller rights in paragraph 3 (i), altogether bar entry if they desire to do so.

Sir Manubhai N. Mehta.

15,541. Secretary of State, am I right in understanding that paragraph 122 will not have any effect of depriving Indian States' subjects of the protection against discrimination, which they at present enjoy?—It does not touch Indian States' subjects at all.

15,542. The language is "The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject." So can they subject any Indian States' subject to such discrimination?—You mean the Federal Government discriminating against the subjects of an Indian State.

Sir Manubhai N. Mehta.] Which at present they do not do.

Mr. N. M. Joshi.] What about the power? The present Government has the power.

Sir Manubhai N. Mehta.

15,543. That is what I want to ask?—It is certainly not intended that there should be any discrimination of that kind. In any case, the discrimination would have to be made by the Federal Government in which, of course, the Indian States would be strongly represented, and by a Federal Legislature in which also the Indian States would be strongly represented.

Mr. N. M. Joshi.

15,544. May I ask you, Secretary of State, in this connection, whether in the Treaties of Accession a Clause that British Indian subjects will not be discriminated against in Indian States will be found?—That will not be found in the treaty of Accession.

15,545. Where can we then secure rights of reciprocity in this matter in the Indian States?—Mr. Joshi is raising quite a new issue. We are not attempting to obtain those rights of reciprocity because we felt it would be a mistake and would be also, what is even more serious sometimes than a mistake, a waste of time to try to impose conditions of that kind upon the Indian States.

Sir Abdur Rahim.

15,546. Secretary of State, I simply want information upon one point if you can give it me. Are there any Indian Companies with Indian capital and directors trading in Britain?—I could not say off-hand. I could find out and let Sir Abdur know.

15,547. Do many Indian Companies like that have offices of their own here?—There must be several; how many, I cannot say.

15,548. Will you kindly let me know?—If the statistics are available we will get them.

Sir Hari Singh Gour.

15,549. You said just now, Secretary of State, that you are pursuing a policy of the Government carried on during the last 100 years giving all British subjects equal rights as regards the elementary right of citizenship, namely, the right to enter and live in British India?—Not the right to enter, no.

Sir Hari Singh Gour.] The right of residence.

Mr. Zafrulla Khan.

15,550. No ; holding public office, pursuing a profession, trade or calling ?—It is all set out in the memorandum and in the Government of India Act too. It is Section 96 of the Government of India Act.

Sir Hari Singh Gour.

15,551. Has this practice been observed when they were mere dependencies or more colonies of Great Britain ?—I do not know ; I could not say off-hand.

15,552. Is it not a fact that the restriction to the right of entry was for the first time recognised and enunciated in the Imperial Conference, that it is the right of the Dominions, including India, to control its own population by restricting the right of entry ?—I do not know whether that is so or not. In any case, it has been the practice in India for a long time.

15,553. The position to which we are relegated is this. In a place in South Africa, or, let us say, Kenya, Indians, although they have been resident there and have been resident for three or four generations, may be debarred by reason

of their colour, caste, descent, or religion from holding certain offices or from following certain trades or professions. But India has not got the right of retaliating against the offending Dominion to that extent by prescribing similarly that as the Indians suffer from certain disqualifications, say, in South Africa or Kenya, the Nationals of South Africa or Kenya, whether resident in India or not, or rather whether domiciled or resident in India, shall also suffer from the same disqualification ?—I am very well aware that India feels great grievance upon these points, and without saying anything indiscreet, from time to time I sympathise with them.

15,554. And would you not help India by strengthening her hands and by giving her full right of reciprocity to which she is entitled ?—We have come to the view that the way to draw a distinction is to give power to withhold the right of entry ; that is our view. We evidently think that some distinction ought to be drawn, and so far we have taken the view that that is the wisest way to do it.

Chairman.] I propose to adjourn now till half-past 10 to-morrow morning, when, according to our arrangements, the Secretary of State will continue to give evidence upon Commercial Discrimination.

*(The Witnesses are directed to withdraw.)*

Ordered, That the Committee be adjourned to to-morrow, 10.30 o'clock.

7th November 1933.

Present :

Lord Archbishop of Canterbury.  
Marquess of Zetland.  
Marquess of Linlithgow.  
Marquess of Reading.  
Earl of Derby.  
Earl of Lytton.  
Earl Peel.  
Lord Middleton.  
Lord Ker (Marquess of Lothian).  
Lord Hardinge of Penshurst.  
Lord Irwin.  
Lord Snell.  
Lord Rankeillour.  
Lord Hutchison of Montrose.

Major Attlee.  
Mr. Butler.  
Major Cadogan.  
Sir Austen Chamberlain.  
Sir Reginald Craddock.  
Mr. Davidson.  
Mr. Isaac Foot.  
Sir Samuel Hoare.  
Mr. Morgan Jones.  
Sir Joseph Nall.  
Lord Eustace Percy.  
Miss Pickford.  
Sir John Wardlaw-Milne.  
Earl Winterton.

The following Indian Delegates were also present :—

INDIAN STATES REPRESENTATIVES.

Sir Akbar Hydari.  
Sir Manubhai N. Mehta.

Mr. Y. Thombare.

BRITISH INDIAN REPRESENTATIVES.

His Highness the Aga Khan.  
Dr B. R. Ambedkar.  
Sir Hubert Carr.  
Mr. A. H. Ghuznavi.  
Lieut.-Colonel Sir H. Gidney.  
Sir Hari Singh Gour.  
Mr. M. R. Jayaker.

Mr. N. M. Joshi.  
Sir Abdur Rahim.  
Sir Phiroze Sethna.  
Dr. Shafa'at Ahmad Khan.  
Sardar Buta Singh.  
Mr. Zafrulla Khan.

The MARQUESS OF LINLITHGOW in the Chair.

The Right Hon. Sir SAMUEL HOARE, Bt., G.B.E., C.M.G., M.P., Sir MALCOLM HAILEY, G.C.S.I., G.C.I.E., and Sir FINDLATER STEWART, K.C.B., K.C.I.E., C.S.I., are further examined as follows :—

Sir Hari Singh Gour.

15,555. Yesterday, my Lord, I drew the attention of the Secretary of State to a resolution of the Imperial Conference. The resolution is No. XXII of the Imperial War Conference, 1917, and it was implemented by resolution No. XXI of the Imperial War Conference of 1918 in which the following words occur. "The Imperial War Conference" (it is dated 24th July, 1918, on page 195 of the Proceedings of the Conference) "is of the opinion that effect should now be given to the principle of reciprocity approved by Resolution XXII of the Imperial War Conference, 1917. In pursuance of that Resolution, it is agreed that : It is an inherent function of the Governments of the several Communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities." Then follow certain rules regarding the visit of visitors for temporary purposes. Then I draw the attention of the Secretary of State to the last paragraph, paragraph 4 : "The Conference recommends the other questions covered by the memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution to the various Governments concerned

with a view to early consideration." I wish to ask the Secretary of State whether effect has been given to this Resolution, paragraph 4 of the Conference of 1918, placing India *vis-a-vis* the other Dominions of the British Commonwealth, including the United Kingdom, in the same position as the United Kingdom stands to India ; in other words to establish a complete right of reciprocity between India and the other units of the British Commonwealth ?—(Sir Samuel Hoare.) The position is, as Sir Hari Singh Gour shows. It is the position we were discussing yesterday. As to what the other Governments have done other than the Government of India, I do not know.

15,556. The position that we discussed yesterday amounted to this, that while the other self-governing Dominions of the British Commonwealth have made laws placing a restriction upon the professions and occupations of Indians domiciled in those Dominions, under your scheme of the White Paper India will not have the corresponding and correlative right of placing the same restrictions upon the Nationals of those Dominions ?—That is so, under our proposals, but, as Sir Hari Singh Gour will remember, I did emphasise the importance of the right of refusing the power of entry.

15,557. The Secretary of State knows that the refusal of the right of entry was conceded to India as far back as 1917.

I have drawn the attention of the Secretary of State to the Resolution and the White Paper makes no improvement upon the status of India as defined by the War Conference of 1917 ?—I gave the reasons yesterday, and I really have nothing to add to what I then said. That does not in the least imply that I am not conscious of the fact that there is a very deep feeling in India upon this question, and, when the Committee come to consider this question in detail they must not ignore the depth of this feeling, for which in my view there is a good deal of justification.

*Marquess of Reading.*

15,558. May I say one word, Secretary of State ? It is quite clear, is it not, that what you are doing here is merely reproducing what is already in Section 96 of the Government of India Act and is actually in force at this moment. I mean the particular first part of your memorandum ?—Generally speaking, that is so. As I said yesterday, it is a continuation not only of the Act of 1919, but the unbroken policy of more than a century.

*Sir Hari Singh Gour.*

15,559. That unbroken policy of a century has been departed from by the Dominions in consequence of the exalted status which they now enjoy under the Statute of Westminster and under the rights conferred upon them by several Imperial Conferences. Therefore, while they have improved their position, India remains exactly in the same position as it was a century ago ?—I should like to see them conform their practice to India rather than to see India conforming her practice with one of the Dominions.

15,560. That is just the point I was coming to. By stereotyping the rights and privileges of the Dominion subjects in British India by an Act of Parliament you deprive India of the right which she possesses of enforcing the principle of reciprocity in the future Imperial Conferences on the strict basis of equality ?—That is Sir Hari Singh Gour's comment upon the proposal. My comment I made yesterday, and I really have nothing to add to what I said yesterday.

15,561. The Secretary of State has mentioned in sub-clause (ii) of paragraph

1 of his Memorandum in which the decision of the Round Table Conference is quoted their recommendation that the rights of British commercial communities should be regulated on a reciprocal basis ?—Yes.

15,562. Is that complete reciprocity as between the United Kingdom and India ?—As near as we can make it.

15,563. For example, the subject of domicile—British subjects possess certain rights because they are domiciled Nationals of the country, and because your Constitution is not a codified Constitution but is a fluid unwritten Constitution Indians are excluded at the present moment from several Services as, for example, the Officers' Training Corps, and employment even in India in the Cypher Bureau. Do you think that the proposal you have in view would in any way bring about that reciprocity to which you have referred in the paragraph I have quoted ?—Yes, I think so. The reciprocity, as Sir Hari Singh Gour will remember, is restricted to certain definite subjects: Taxation, travel and residence, holding property, and so on.

15,564. Then do I take it that in other matters the White Paper proposals give India the freedom to legislate in her own interests ?—Outside the field of trade does Sir Hari Singh Gour mean ?

15,565. Yes ?—Yes, subject to the various provisions in the White Paper that is so.

15,566. Unfortunately those various provisions of the White Paper cut down the power of legislation to one word. The Governor-General in his discretion may overrule the Legislature ?—In the field of his special responsibilities.

15,567. Yes ; that is exhaustive of the rights which the Governor-General in his discretion may exercise and which means the control of the Secretary of State and of the British Cabinet ?—The ultimate control. But Sir Hari Singh Gour will remember that there is no bar, speaking generally, upon the power to legislate, with one or two detailed exceptions, in the White Paper. The Governor-General only intervenes where one of the special responsibilities is actually seen to be in danger. It may be in actual practice his intervention will be very rare.

15,568. But the Secretary of State recognises that it is the ultimate control that counts?—No; I do not think I would ever give an answer Yes or No to a very general question of that kind.

15,569. There is some little misapprehension. I am quite sure that the draftsman never intended it, but it is there. I drew the attention of Sir Malcolm Hailey yesterday, and I wish to draw the Secretary of State's attention to-day to this: In paragraph 3, sub-clause (ii), Clause (a), it is stated that it is "to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom, subject to the right of authorities empowered by any legislation to exclude or remove undesirable persons to exercise that power in respect of an individual, notwithstanding the fact that he is domiciled in the United Kingdom." I understand this clause to mean that the right of exclusion and removal of an undesirable person is a right inherent in the Indian Government, in the exercise of which Colonial and other British subjects might be excluded, and this was intended to emphasise that persons domiciled in the United Kingdom are no exception to the general rule?—That is so.

15,570. But I beg to submit that that might be made clearer than it is in this paragraph?—I see Sir Hari Singh Gour's point; at least, I think I see it; he will correct me if I am wrong. This paragraph says that an undesirable British subject domiciled in the United Kingdom can be excluded. He wishes to know whether this power of exclusion also covers the right to exclude an undesirable British subject domiciled in the Colonies or the Dominions. That is so. It is meant to make both exclusions possible.

15,571. I therefore submit that an independent clause might be inserted giving the Government of India the right of exclusion of all persons whether members of the British Commonwealth or not?—We can make it clear in the draft.

Sir Hari Singh Gour.] Thank you.

Mr. N. M. Joshi.

15,572. In the case of a British subject born in the Colonies, the right to restrict

entry also includes the right to exclude those people and also to deport them. It is not necessary in my judgment in that case. There is the right to restrict entry which really means to exclude those people. It may also be implication go further?—But this point here is a rather different point. This deals with special cases, say, of a criminal, whereas the other right of exclusion would be of a more general character.

15,573. My point was, Secretary of State, that the bigger right includes the smaller?—That is a drafting point.

Sir Hari Singh Gour.

15,574. I think my friends behind me have not really appreciated the point I was making. They seem to suggest that the right of prohibition of entry postulates and carries with it the right of removal. That is not so, because if a person has unlawfully entered, then he has not entered at all under the Act, and he is therefore removed, but the right of removal and exclusion contemplated by this Clause deals with persons who were resident in India and may even be domiciled in India, but have proved themselves to be undesirable persons, which gives the Government the right of removal and exclusion?—Yes; that is so.

15,575. The two points, therefore, are quite distinct?—Yes, you are quite right.

15,576. I have not yet been able to understand, Secretary of State, the real clear import of sub-clause (iv) of paragraph 3, which deals with the case of a company incorporated in India where the British subjects domiciled in the United Kingdom are deemed to be domiciled and resident when they are neither domiciled nor resident in British India, and the effect of which in plain words would be this: No law passed by the Indian Legislature imposing any restriction in respect of domicile, residence, etc., upon British subjects domiciled in the United Kingdom shall be of any effect. That is the meaning in plain language of this Clause. Is it not so?—No; not at all. The meaning of the Clause is the meaning that Sir Malcolm Hailey and I explained in answer to a question of Lord Reading's yesterday. This Clause deals with the setting up of



companies in India. The Indian Legislature can make conditions, but if those conditions affect domicile, residence, duration of residence, and so on, a United Kingdom Company incorporated in India would for that purpose count as an Indian Company.

15,577. That is the point I am making, namely, that a person domiciled in the United Kingdom shall, notwithstanding an Indian Law to the effect that he shall be domiciled in India, be deemed to be domiciled in India for the purpose of this Clause. That is the meaning?—Yes; that is so.

15,578. That is exactly what I was driving at. In other words, you have enlarged the meaning of the word "domiciled" and carried its import to the extent that persons who are not domiciled in India will be deemed to be domiciled in India for the purpose of this Clause?—I could not accept that comment, great lawyer as Sir Hari Singh Gour is. This Clause deals with companies of shareholders—the qualifying of shareholders, etc.

Marquess of *Reading*.

15,579. It simply means to comply with the conditions imposed by the law in regard to these various matters. That is the intention of this paragraph?—Yes.

Mr. *M. R. Jayaker*.] This Clause does mean this, Secretary of State, that to persons who have never been domiciled or resided, and never have had the language, the race, religion, or descent of an Indian, you are extending to every resident in the United Kingdom the benefits as if they had been domiciled, or resided, or had the language, the race, the religion, descent, etc., of an Indian.

Sir *Hari Singh Gour*.

15,580. Yes?—For the restricted purpose of this Clause.

Sir *Hari Singh Gour*.] Yes.

Mr. *M. R. Jayaker*.] That is so. People who have never been out to India, even for a month, under this extended provision will get all the benefits as if they had resided, been domiciled, etc., as in this clause provided.

Sir *Hubert Carr*.] Provided the Company is incorporated in India. Is not that so?

Marquess of *Reading*.] It is only in reference to the conditions imposed on the company. It does not go any further than that.

Mr. *M. R. Jayaker*.

15,581. I am speaking for the purpose of this clause; for the limited purpose of this clause you are giving to every resident of the United Kingdom all the benefits as if he had resided, had been domiciled, etc., in India?—Mr. *Jayaker* will remember, however, that the range of benefits is a strictly limited range.

15,582. Yes?—For the purposes of that restricted limited range, his answer is correct, but his questions seemed to imply a much more extensive range than is really the case under this clause.

15,583. No. I said for the limited range of this clause?—Yes.

Sir *Hari Singh Gour*.

15,584. Even for the limited range of this clause, is there any British law in India which gives to Indian subjects the same right here at the present moment?—I could not say off-hand. I know very little about the law on that matter.

15,585. If there were no law on the subject, this clause would not be justifiable?—Whether there is such a law or not I do not know, but supposing we did anything to the contrary, then, under the reciprocity arrangement we should lose this advantage.

Sir *Hari Singh Gour*.] Yes; that is so.

Mr. *M. R. Jayaker*.

15,586. May I ask a question on that point?—You remember, Secretary of State, only about three or four months ago there were certain scholarships given here by a public man (I do not want to mention names) and it was expressly stated that they were only open to persons who were domiciled in the United Kingdom. Would you apply a principle like this, that all those who were domiciled in India would be, for the purpose of obtaining those scholarships, regarded as if they were domiciled in the United Kingdom?—Surely the case that Mr. *Jayaker* is putting (I do not know about it myself) I would imagine is not the act

of a government ; it is the act of a private individual.

15,587. I am merely mentioning the principle ?—This clause deals with the act of government.

Sir *Austen Chamberlain*.] Could we hear Mr. Jayaker's question ? I missed the opening words.

Mr. *M. R. Jayaker*.

15,588. I read in the papers about three or four months ago of scholarships being given by a public man with the express condition that they were to be obtained by people who were domiciled residents of the United Kingdom. I know it is the case of a private scholarship. Therefore, the instance is not quite in point. But I am explaining the principle of this clause : supposing an Act were passed in the Imperial Legislature here, in the House of Commons, which said that certain benefits, either of scholarship or educational, were only open to residents domiciled in the United Kingdom ?—Mr. Jayaker, this clause, really, so far as I can judge, does not deal with an issue of that kind at all ; this clause deals only with companies.

Mr. *M. R. Jayaker*.] Yes, I am speaking of companies.

Sir *Joseph Nall*.] May I ask this : Is not it the fact that this is exactly copying the procedure in English law ? There is no discrimination against any English company if there is any Indian associated in it or with it.

Mr. *M. R. Jayaker*.] I am not aware of that. The question was asked by Sir Hari Singh Gour, and the Secretary of State very properly replied that he could not answer the question offhand. That is why I am not pursuing it further.

Marquess of *Reading*.] I will answer that question and say that there is not in our Company Law any such restriction. That is the question I understood Sir Joseph Nall to put.

Sir *Hari Singh Gour*.

15,589. My last question to the Secretary of State is regarding the coastal shipping. By this clause you have prevented the Indian Government from reserving the coastal shipping to Indian companies domiciled in India, and it is

with reference to that that this clause that we have been discussing becomes very germane, namely, sub-clause (4) of main Clause (3) ?—Yes. It is really sub-clause (8), is it not ?

15,590. Yes. The net result of this would be that the Government of India will never be able to do what the Australian Government have done, namely, reserve the coastal traffic to the nationals of Australia ?—I speak with hesitation about what any Dominion does, but my impression is that that is not the case with Australia.

Sir *Phiroze Sethna*.

15,591. Sir Samuel Hoare, yesterday you mentioned to the Committee the recommendations made by the External Capital Committee, otherwise known as the Blackett Committee ?—Yes.

15,592-3. It not there a further recommendation in that Committee's Report, or has not the Government of India been enforcing a further condition, namely, that in the case of new companies to be started in India which desire to avail themselves of any concessions offered by the Government, a certain proportion of the capital should be offered to Indians, in the first instance ? I quote two instances. In the Indian Radio-Telegraph Company the Government of India stipulated that 60 per cent. of the shares should be held by Indians. Similarly, in regard to the Civil Aviation Companies that have been formed, it is also laid down that more than 50 per cent. of the shares should be held by Indians. Are you aware of that ?

Marquess of *Reading*.] May I ask you, Sir Phiroze, when you say, "held by Indians," do you mean native-born Indians or persons domiciled in India ?

Sir *Phiroze Sethna*.] It is said generally. I could not tell you, my Lord, whether it is meant domiciled in India or otherwise.

Witness.] I could not say offhand whether the details are as Sir Phiroze states or not. My memory is that the condition was that the shares should be offered to Indians.

15,594. In the first instance ?—In the first instance.

15,595. Questions were put to you yesterday in regard to shares in such companies, whether they should be held by those residing in India. I do not remember your answer, but is not it a condition laid down in the Reserve Bank Act that shares in that Bank will only be allotted to residents in India?—Here again it is very difficult, without referring to the Report of the Committee, to give a specific answer. My memory goes to show that that is so. I should like to confirm the actual wording of the recommendation.

*Mr. M. R. Jayaker.*

15,596. Under the operation of Clause 4, as you have worded it here, residents in the United Kingdom who have never resided in India would be entitled to that provision?—If that is so, I think it would be a case for rather more rigid drafting and ensuring the Reserve Bank conditions. Moreover, Mr. Jayaker will remember that as the Reserve Bank Bill will be passed before the Constitution comes into operation, any conditions laid down in the Reserve Bank Bill will be safeguarded.

15,597. The point I was making to you, Secretary of State, was this, that the wording of Clause 4 has been made so inclusive that it would be difficult to draft a condition which is intended only to cover native-born Indians except by putting in the words "native-born Indians." It would be difficult to include them by any conditions based upon domicile or residence because you have got in this clause nearly every test by which a native-born Indian must be distinguished from residents of the United Kingdom?—If that is so, it is a case for more careful and comprehensive drafting in the next stage of our discussions.

*Mr. Zafrulla Khan.*

15,598. Secretary of State, with reference to the second consideration that you have put forward, as regards the Reserve Bank Bill, that the Bill will have become a Statute before the new Constitution comes into force, supposing after the coming into force of the new Constitution a block of shares in the Reserve Bank were sought to be acquired by somebody who under your definition in

Clause 4 of your Memorandum could be regarded as a domiciled Indian or an Indian resident in India, would he be able to acquire that block of shares?—The safeguard, Mr. Zafrulla Khan, would be that in that case the Board could refuse to register the transfer of the shares under the Act.

*Sir Phiroze Sethna.*

15,599. What reason would they advance for such refusal?—I imagine the conditions under which the Bank would be set up. I imagine (I am now using the phrase in a general way) it would really be outside their articles of association.

*Marquess of Reading.*

15,600. If the Reserve Bank Act, when it comes from the Legislature, contains any such clause, it would necessitate, would it not, some provision which would meet the exception which you have put here in paragraph 4?—It is a question then of drafting so as to meet that particular clause?—It might well be so. If it is not met in another way, we might have to meet it here.

*Lord Rankeillour.*

15,601. Will the Reserve Bank be an incorporated company within the meaning of these words?—That is a lawyer's question, I am afraid.

*Sir Hari Singh Gour.*] If it is a shareholders' Bank it will be an incorporated company.

*Marquess of Reading.*] It must be.

*Witness.*] It will be an incorporated company under special conditions.

*Sir Hari Singh Gour.*

15,602. Incorporated under the provisions of that special Act?—Yes.

*Mr. M. R. Jayaker.*

15,603. But it is incorporated in India; those are the words in Clause 4?—Yes.

*Sir Phiroze Sethna.*

15,604. Mr. Secretary of State, you have headed sub-paragraph (8): "A Special Provision for Ships and Shipping." Is not this quite new?—Was this

discussed at any one of the three previous Round Table Conferences?—I cannot remember whether we discussed it. I certainly remember the question of shipping came up now and then. It is in the White Paper. This is merely a comment upon what is in the White Paper. There is nothing new here as compared with the White Paper.

15,605. Was it ever intended in any discussions at the three Round Table Conferences, or is there anything to show in the White Paper, that ships registered in the British register can also be registered in the Indian register on terms of equality, as is proposed?—The Clause is 123 in the White Paper: "Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in British India and the United Kingdom."

15,606. We do not remember having discussed this at any of the Round Table Conferences. I do not know how it has crept in in the White Paper?—I do remember discussions. I do not remember how detailed they were.

15,607. Will not this mean that India will be deprived of the advantage of a separate Indian register, such as is maintained by other countries, in order to distinguish its Mercantile Marine from the Mercantile Marine of other countries?—No, that is not so, Sir Phiroze.

15,608. Why not, Mr. Secretary of State?—I do not know why not, but it is not so, anyhow. I think it would be an unnecessary restriction upon the Indian Government.

*Mr. N. M. Joshi.*

15,609. Can ships registered in India have any kind of preference over ships registered in the United Kingdom?—No.

15,610. Sir Phiroze Sethna's question is: Why should people register their ships in India?—It is a part of the general reciprocal arrangement—the same treatment for both.

*Sir Phiroze Sethna.*

15,611. The second sentence of that sub-paragraph reads: "It is usual in all treaties relating to matters of com-

merce to specify not only individuals and companies but also ships, where it is intended to give rights in regard to matters of shipping and navigation." This, surely, Secretary of State, is not a treaty between two separate entities, but this is more a matter of the Constitution in the making. Would you still insist upon this clause?—We certainly insist upon the clause, and Sir Phiroze's point about its not being a treaty is not quite accurate. The object of this reference is to show that in legal documents, for instance, treaties, you would have to make this distinction between ships and persons and companies.

15,612. You just now replied to Mr. Joshi that your suggestion is on the basis of reciprocity?—Yes.

15,613. Would you regard reciprocity between such diverse interests as British shipping and Indian shipping as the difference between a giant and a dwarf? Would you regard that as a fair means? The difference between Indian shipping and British shipping is so very vast that the British shipping has everything to gain and nothing to give?—I would not say that at all. I would say that if Sir Phiroze, with his business experience, would look at the profit and loss account of British shipping companies within recent years, he would find that that is very far from the case.

15,614. That may be so within recent years, but it has not been so in the past, as you cannot but admit. These shipping companies have all paid dividends and very large dividends. It is only on account of the world depression at present that British shipping, like other shipping, is not doing as well. It would simply amount to this, that the all-powerful British shipping will continue to crush Indian shipping as it has done in the past?—I should demur to every part of this statement.

15,615. Has not that been our experience in the past?—I should say it had not.

15,616. Are you aware, Mr. Secretary of State, that between 1860 and 1925 as many as 120 Indian shipping companies were formed with a capital of about 46 crores of rupees, which in sterling

amounts to more than 30 millions, and that of those only a very few remain, and all because of competition?—I should very much doubt if it was all because of the competition of particular British Companies.

15,617. If you would like proof of that I will quote from an English authority, namely, the Chairman of the Madras Chamber of Commerce, who in his evidence before the Royal Commission said as follows—the gentleman whose opinion I am quoting is the Hon. V. G. Lynn, Chairman of the Chamber of Commerce of Madras: “It is not generally known what is the nature of the combination, agreement, or understanding between the steamship lines serving Indian ports, but an agreement or understanding of some sort undoubtedly does exist between the British India Steam Navigation Company and the Asiatic Steamship Navigation Company to maintain freights and passenger rates and to create a monopoly for themselves in the Indo-intercoastal, Indo-Ceylon and Indo-Burman trades.” He stated further: “From time to time efforts have been made by independent lines to participate in the Indo-intercoastal, Indo-Ceylon and Indo-Burman trades, but the active competition of the B. I. S. N. Co. and the tacit support of the Asiatic Company has invariably resulted in the opposing steamers and lines being withdrawn after a short time.” Sir Hubert Carr says that the B. I. must be very efficient. I would like to pursue that point. Did not the B. I. attain the success that it did because of the subsidies that it received from the Government, or otherwise it would not have started?—I really could not answer Yes or No to a question of this kind. These are detailed questions connected with the past of a lot of private companies. It is very difficult for me to go in detail into their records over a number of years. I should still say, whether it be so or not—and I am inclined to think that it is not so—it is necessary to have an agreement of reciprocity between governments in question of this kind.

15,618. My point is that the reciprocity is not possible between the very strong and powerful British shipping interests and Indian interests. For

example, I take it that you would advance the theory that Indians, if they wanted to do so, could come here and start in the coastal trade, and there is no objection to the same?—Yes.

15,619. I suppose you are aware what is the percentage of foreign shipping interested in the coastal trade of this country?—No.

Sir *Phiroze Sethna.*] Not more than 2 per cent., and that in spite of such strong and well developed organizations as the Dutch and the Germans have; so it is next to impossible for India to compete with British shipping interests unless they are afforded some privileges. Lord Irwin will correct me if I am wrong, but I think even he mentioned during his Viceroyalty in India (I believe at Cawnpore) that it was difficult in modern days of competition for Indian shipping to continue without State aid, and I think Sir Austen Chamberlain made the observation last night that there is no trade which requires subsidization or is subsidized more than is shipping.

Sir *Austen Chamberlain.*] I did not say “which requires.” Do not let me be represented as an advocate of that system.

Sir *Phiroze Sethna.*] You may not be an advocate, Sir Austen, but you recognize the fact.

Sir *Austen Chamberlain.*] I recognize the fact.

Sir *Phiroze Sethna.*] That is all I wanted.

*Witness.*] But before we pass from, I will not say questions, because I think really Sir Phiroze has been expressing a view, a view with which on the whole I do not agree, I would ask him to consider the implications of his argument, namely, that there should be discrimination against British trade. That implication means the complete contradiction of the general agreement that we have had in the past, namely, that there should not be commercial discrimination.

15,620. Not generally speaking, but in some cases such as this, would you not recommend it?—No.

15,621. That would mean that Indian shipping would never advance beyond

what it is to-day?—I should not agree with that comment either.

15,622. You are aware that the navigational laws of this country prevented goods from being brought into this country in Indian bottoms, so that there was discrimination against Indian interests in this matter years ago?—I suppose in theory there was such discrimination in the seventeenth century, but how far that has any bearing upon our present discussions I fail to see.

15,623. You say that because that was in the 17th century it does not apply to-day. Is that your answer?—I should have said that it had no bearing at all upon our present discussions.

15,624. But according to you, Sir Samuel, it has a bearing because in answer to Mr. Morgan Jones yesterday, you said that you are recommending this process of reciprocity on account of the nature of the partnership that has existed between England and India for decades or centuries?—But does Sir Phiroze Sethna really mean to imply that India has a grievance because in the 17th century we had a discrimination? There was not a single Indian ship sailing in European waters then.

15,625. Yes, there was. There was the famous case of the steamship "Cornwallis"?—There could not have been a steamer in the 17th century.

15,626. You are perfectly right?—I should have thought this was dragging up historical instances as imaginary grievances at the present time.

15,627. I have brought it out for the simple reason that there are certain industries in India which will require to be helped, and this is one of those, otherwise Indian shipping will never advance, and it does require to be supported?—But Indian shipping has advanced considerably in recent years.

15,628. I would not say so?—I have seen many memoranda showing the great advance that Indian companies have made in the coastal trade.

15,629. There is only one company which is able to live to-day, because of an arrangement arrived at with its powerful rivals. Otherwise the other shipping companies have all gone to the wall?—Shipping companies have gone

to the wall in large numbers all over the world in recent years.

15,630. I know that, but the reasons all over the world are different from the reasons which prevail in India. That is what I want to bring out. In the Imperial Conference of 1926, it was laid down that there would no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor would Dominion laws be liable to be held inoperative on the ground of repugnancy to laws published by the Parliament of the United Kingdom. In spite of that you are imposing this hard condition on India and I am requesting the Committee to consider whether they will, in the case of Indian shipping, extend to them some privileges as have been frequently asked for?—As Sir Phiroze Sethna is quoting these instances from the deliberations of Imperial War Conferences, he should also quote at the same time Part IV of the British Commonwealth Merchant Shipping Agreement, 1929, and particularly Article 10; "Each Part of the British Commonwealth agrees to grant access to its ports to all ships registered in the British Commonwealth on equal terms, and undertakes that no laws or regulations relating to sea-going ships, at any time in force in that part, shall apply more favourably to ships registered in that part, or to the ships of any foreign country, than they apply to any shipping registered in any other part of the Commonwealth."

15,631. I am not aware of that. Thank you for drawing my attention to it? But what I have quoted shows that the Dominions and the Possessions are given a freedom which you are denying to Indians. Now, Mr. Secretary of State, I am not going to touch on the subject of the Fiscal Convention, as you have suggested that that will be taken up later, but may I read to you the sentence from Mr. Montagu's Speech as follows: "After that Report", namely, the Report of the 1919 Joint Select Committee, "by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe

was wisely given and which I am determined to maintain, to give to the Government of India the right to consider the interests of India first, just as we, without any complaint from any other parts of the Empire, and the other parts of the Empire without any complaint from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first." Of course, Fiscal Convention and commercial discrimination are two different things, but do not you agree that since the object in view is the same, namely, the development of Indian industries, the same principle should apply, subject to one important modification which you mentioned in reply to Mr. Morgan Jones' question. We recognise that in the case of British Companies already established and operating in India there is a moral claim for protection; but can you explain why in future and in the case of companies not operating in India at present India should not have the same rights and liberties as regards internal regulation as Great Britain and the Dominions?—Sir Phiroze has made a Second Reading Speech in favour of commercial discrimination. I can only reply that I do not agree with it.

15,632. Do you agree with the Convention about purchase of stores as laid down in the Simon Commission Report? You do not propose to disturb that, do you?—No.

*Mr. M. R. Jayaker.*

15,633. May I just ask your attention to paragraph 3, Secretary of State? "It is proposed that the Constitution Act should contain a general declaration that no British subject (Indian or otherwise) shall be disabled", etc. May I suggest to you that for the purpose of clearness it would be better if you separated the case of Indians in India from those who come into India, either the residents of the United Kingdom or Colonials or others, because the case of India stands on a different footing and it will tend to clearness in India if you took out the case of Indian born Indians, like minorities and their rights, because they stand on a different footing? I am therefore asking if you will consider the splitting

up of this clause into two, one dealing with rights of Indian minorities, because they will be fundamental rights like the rights of holding property, etc., and another clause dealing with the rights of non-Indians to whom you give protection in the country?—I will attend to Mr. Jayaker's suggestion. I would not like to express an opinion one way or the other without looking into it further.

15,634. You make no distinction throughout your Memorandum, Secretary of State, as regards bodies which were trading with India at the date of the Constitution Act, but which were not resident in India nor had establishments there. You make no distinction between bodies which were trading and had residence and establishments and those which were merely trading but who had no residence and no establishments?—No; and I do not think you can make any distinction of that kind.

15,635. Because I am asking your attention to the Report of the Second Round Table Conference at page 57 of the copies supplied to us, paragraph 24. This was the Report of the Committee: "The question of persons and bodies in the United Kingdom trading with India but neither resident nor possessing establishments there requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded, upon a basis of reciprocity, the right to enter and trade with India." You have made no such distinction between these two classes in the memorandum or in Proposals 122 to 124 of the White Paper?—Mr. Jayaker's point, if I understand him rightly, is that reciprocity ought only to cover genuine traders in and with India.

15,636. Yes?—I will look into the point and communicate further with him about it.

15,637. Although we differed materially on many of the points the utmost agreement that was recorded was on this principle, that those who were genuine traders dealing with India who had established themselves had a moral claim

which did not belong to anybody else. That was the basis on which we proceeded throughout, and I think those Indians who agreed with the views went on this principle, that those who were in India already under a different system of government should in no way be prejudiced by a change of Government. That moral claim, I am putting it to you, cannot possibly apply to others who come in for the first time after the Act is passed or who are not genuine traders with India?—(Sir Malcolm Hailey.) The distinction, I think, Mr. Jayaker, will apply mainly to eligibility for bounties. It was that, I think, which he had in his mind.

15,638. No, it will apply beyond that, Sir Malcolm. For instance, if India had the liberty of laying down conditions which you prescribe for bounties only in this memorandum, in the case of all companies which come in for the first time after the Constitution Act, India will certainly have a very strong leverage for Indianising those companies not only in respect of bounties, but in the terms of incorporation; but do you see any justification for according to people who come into India after the Constitution Act, or who are not genuine traders with India at all, the same protection as those companies which have acquired an equitable and moral claim to be protected under the New Constitution?—We only protect the new Companies coming in against certain regulations in regard to their composition. That is the extent of the protection for new Companies coming in. The ground for doing so is that if you did not give them that precise form of protection you would be to that extent prejudicing not companies, but British subjects as such.

15,639. If that is your contention, may I point out to you in paragraph 3, subparagraph (iii): "As regards companies which are or may hereafter be incorporated in the United Kingdom," you must necessarily limit that expression "incorporated in the United Kingdom" by the residents of the United Kingdom?—I think the only way which you have, in point of law, of distinguishing in this respect is incorporation.

[Marquess of Reading.] There is no such thing as a resident company. It is a

company which is incorporated in a particular place, which makes it equivalent to residence or domicile in the case of a subject.

Mr. M. R. Jayaker.

15,640. What would happen to a Company incorporated in England, but which was composed mainly or entirely of Colonials coming from a country which did not give equality to Indians? It would fall under your definition "incorporated in the United Kingdom", although the members who formed that company were all Colonial or Dominion men?—We have to admit that there is point in what Mr. Jayaker says, that as our only legal basis of distinction is incorporation that might allow Colonials starting a company incorporated in Great Britain to get the advantage of this Section, but the difficulty is that you can never tell at one particular time what exactly is the composition of your shareholders' list. If you laid down that the company must not only be incorporated in the United Kingdom, but must consist of residents of the United Kingdom itself, you would be dealing with a constantly shifting body, and it would be very difficult in point of law at one time or another to say whether your shareholders were residents in the United Kingdom or were Colonial to take Mr. Jayaker's instance. It is a continually shifting list. The only test we have been able to find for a satisfactory discrimination in point of law is incorporation, as Lord Reading says.

15,641. But supposing you took the nature of the company at the time of its incorporation. I am aware of what you say, and I quite agree it would be difficult to say that the conditions were satisfied at all stages by the same company, but supposing you take the case of incorporation, do not you think it will prevent many Colonials getting the rights of trading in India. You are aware how strong is the feeling against Colonials trading in India coming from countries which do not allow the same advantages to India. I want to ensure that the benefit given by this clause is entirely in favour of residents in the United Kingdom and not in favour of Colonials who will come and form a company in England and go and get the



privileges which this country is given in India?—(Sir *Samuel Hoare*.) We will look into the point, but I do not disguise that it is a very difficult question.

15,642. You could say that a proportion of directors or shareholders must be residents of the United Kingdom, just as you do in the case of the bounties. There you recognise that a certain proportion of the directors must be of a certain nationality. You can do the same here. I am only anxious to prevent that this clause should be made the occasion of Colonials getting in India trading rights which they would not get otherwise?—(Sir *Malcolm Hailey*.) It is exceedingly difficult, no doubt, because there is the case of the holding company. One company may hold the shares in another. It is exceedingly difficult if you are to look behind your list of shareholders at any time and say whether they are residents of one particular place. I am sure everyone accustomed to dealing with companies' lists will realise that difficulty.

Sir *John Wardlaw-Milne*.] Would not there be a difficulty in a case such as Mr. Jayaker suggests, that you might have nominees appointed? That seems to me to be a cardinal difficulty at once.

Marquess of *Reading*.] Or a holding company registered as the shareholders.

Earl *Winterton*.] I think we ought to understand what is meant in the questions and answers by the use of the term "Colonial." The term "Colonial" applied to British subjects in the Dominions is quite out of use. By the term "Colonial" do you mean British residents in the Crown Colonies or British residents in the Dominions?

Mr. *M. R. Jayaker*.] I meant both. I meant residents in the Crown Colonies and residents in the Dominions.

Earl *Winterton*.] There is a very vital distinction.

Mr. *M. R. Jayaker*.

15,643. I know; I am much obliged to you for reminding me. In Clause 3 (iv), to which your attention has been called by several Members, what is it you want to secure, Sir Samuel, by that extended definition? You agree that in the case of private companies it will have no operation, because a private company, if

it wants to exclude non-Indians, can always use the expression "Indian born Indians," and then your Clause becomes nugatory. In the case of Legislation, that is to say, a company which is incorporated by Legislation, only in such cases will this Clause come into operation, and, in such cases, may I point out, as you pointed out rightly in reply to a previous question, that it is always in the option of the directors to accept shareholders' application, so it is also in the hands of the shareholders to appoint directors. Similarly agents and servants is a matter entirely in the hands of the company. Therefore, even in the case of a company which is incorporated by an Act of the Legislature, to which this alone would apply, it would be so easy to defeat this Clause by putting the words "Indian born." In what cases do you think this Clause is operative?—(Sir *Malcolm Hailey*.) We fully realise what Mr. Jayaker says. There is full liberty for the company to constitute itself under its Articles of Association, to appoint what directors it likes, and so on. The object of this Clause is to prevent legislation making requirements in the case of companies which would act to the prejudice of United Kingdom residents; that is all.

15,644. This Clause would mean this, to put it in plain English: British subjects domiciled in the United Kingdom will be entitled to become directors, shareholders, agents and servants. Is not that so? It does not go beyond that. "will be entitled to become directors, shareholders, agents and servants"?—Or, rather, that the company will not suffer in any way as a company if the directors, shareholders and so forth, are United Kingdom residents instead of residents of India. That is the extent of the Clause, and no more. It confers no title on anyone to be a director or a shareholder.

15,645. Therefore, it comes to this: At the most this Clause only gives the right to the residents of the United Kingdom to become directors, shareholders, agents or servants, as if they were Indians. I am putting a short expression?—Yes.

15,646. But it does not take the Clause beyond that because if the company was so minded as to discriminate between

Indian born Indians and the Statutory Indians, if I may use the expression, they can always say that the directors will be Indian born Indians?—Undoubtedly.

15,647. Therefore, what is the operation of this Clause?—I think Mr. Jayaker must read the Clause as though it conferred certain rights on British Indian residents to take part in the company as shareholders or directors. The intention of the Clause is merely to prevent a company from being prejudiced if the law lays down that at its incorporation it should include a certain proportion of Indians and the like. In that case, United Kingdom residents would come as Indians and therefore comply with the law. The company having complied with the law to that extent would not be prejudiced in point of taxation, and so forth.

15,648. I see. Then in sub-paragraph (vi) you say "in addition, it is proposed that the Constitution Act shall require the reservation for the signification of His Majesty's pleasure of any Bill which, though not in form repugnant to the provisions indicated in Clauses (ii), (iii) or (iv), the Governor-General in his discretion considers likely to subject to unfair discrimination any class of His Majesty's subjects." Is it anything more than paragraph 39 of the White Paper? You have in paragraph 39, a very unlimited power to the Governor-General: "The Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure." Is it anything more than this?—The important words in sub-paragraph (vi) are "though not in form repugnant to the provisions indicated in Clauses (ii), (iii) or (iv)."

15,649. But surely the Governor-General will always consider it. He will not be blinded by the form of the Bill. I want to know whether it takes paragraph 39 further?—You will notice it makes the reservation obligatory.

15,650. Therefore, you say in such a case, but of the three alternatives which

are open to the Governor-General in paragraph 39, he will not be at liberty to follow two out of the three. Is that what you mean?—(Sir *Samuel Hoare*.) Yes, that is so.

15,651. If so, why are you making it strict, especially in the case of unfair discrimination in the case of His Majesty's subjects? I can understand your making it strict in the case of discrimination in favour of the residents of His Majesty's Kingdom, but why are you so tender about His Majesty's subjects in other parts of the Dominions and the Colonies?—But, Mr. Jayaker, this is not simply British subjects or Dominion subjects. It is all subjects, including Indians, protected by these clauses.

15,652. As I was mentioning to you, the case of Indians should be entirely in a different clause, because it will create a lot of confusion if you treat the case of Indians in all these clauses as on a par with residents of the United Kingdom or Colonials or Dominion people. I am suggesting that the case of Indian minorities should be treated separately. Assuming you leave Indians out, I am suggesting, if you must make the Clause so strict as to limit the liberty of the Governor-General which is given by paragraph 39, why not confine it to cases of unfair discrimination as against the residents of the United Kingdom only?—I understand the Clauses to be so in effect.

15,653. It is "His Majesty's subjects"; that is the expression?—(Sir *Malcolm Hailey*.) It only refers to sub-clauses (ii), (iii) and (iv).

15,654. Sub-clause (vi)?—(Sir *Samuel Hoare*.) Yes, but Mr. Jayaker will see that this clause only refers to sub-clauses (ii), (iii) and (iv).

15,655. Yes, it is mentioned there, (ii), (iii) and (iv). That is just the reason. I just want you to follow my point because it is a little intricate. You have mentioned Clause (ii) to which this principle will apply. If you refer to Clause (ii), it refers to the right of preventing the entry as you explained yesterday in answer to Mr. Zafrulla Khan?—Yes.

15,656. Therefore, if there is a Bill (I am explaining how sub-clause (vi) will operate) which prevents the entry of any class of His Majesty's subjects resident in the Colonies and the Dominions, this

strict Clause will apply, and the Governor-General in such a case will be compelled not to act upon the two alternatives, but in every case he must reserve it for the signification of His Majesty's pleasure. Why is such a strictness necessary in the case of His Majesty's subjects in the Dominions?—Mr. Jayaker's explanation of sub-clause (ii) I do not think is accurate.

15,657. I thought you said yesterday, in answer to Mr. Zafrulla Khan, that sub-clause (ii) gave the right of restricting the entry of the Dominions' and Colonies' subjects into India?—(Sir Malcolm Hailey.) It gives the right of restricting the entry of residents from the Dominions and Colonies merely because it does not apply to them the protection that is extended to residents of the United Kingdom.

15,658. That may be the way in which the principle comes in, but it does come in, I think. Take the words "to provide that no laws restricting the right of entry into British India shall apply to British subjects domiciled in the United Kingdom." The necessary implication is that such a law can be made with reference to people who are not British subjects domiciled in the United Kingdom. Therefore, it does give the right to the Legislature of India to prevent the entry of British subjects not domiciled in the United Kingdom?—I think it might be fair to say that if sub-clause (vi) seems to have the precise effect which Mr. Jayaker thinks, then it will be very easy to alter it in order to give its true implication, namely, that it only stands as a protection to British subjects domiciled in the United Kingdom; that is what it was intended for, and it can in drafting be restricted to that.

15,659. Then I proceed now to paragraph (2). There you mention, Mr. Secretary of State, some conditions. I am speaking of bounties. You observed yesterday that those conditions are the same as were mentioned in the Report of the Committee on External Capital?—(Sir Samuel Hoare.) Yes.

15,660. Am I to understand that those conditions are illustrative and not exhaustive? I will make my question clearer. For instance, at page 16, if you have a copy of the Report, you find in

Clause 2, Sub-clause (2), where the conditions are mentioned, one condition is, "it has a share capital the amount of which is expressed in the Memorandum of Association in rupees". That condition is not mentioned here?—No; but those are the conditions we have in mind.

15,661. Therefore they are not exhaustive as mentioned there. That is the only thing I wanted to know. You have similar conditions to those which are mentioned in this Report?—Yes. You mean they are not exhaustive in our Memorandum?

15,662. Yes?—Yes.

15,663. For instance, as Sir Phiroze Sethna put it to you, a condition like this, that a certain proportion of capital should be made available for subscription in India would be a condition of this character?—Yes. The conditions we have in mind are the conditions of the External Capital Committee.

15,664. And similar conditions, because they do not exhaust the conditions. I do not want any answer which will unnecessarily create confusion, but what I want to know is this. You have mentioned only two conditions here, Sir Samuel: composition of the Directors and facilities—reasonable facilities, as Sir Austen Chamberlain pointed out—to be given for the training of Indians; there are only two, and I want to know whether you restrict yourself only to two or whether they are merely illustrative of the conditions you have in view?—No. I did not read the whole of the Report of the External Capital Committee. It is the text book upon which we are working.

Mr. N. M. Joshi.

15,665. May I ask one question? Are the conditions given in the External Capital Committee's Report the last word, or could they be added to?—I think substantially this is the basis of what we intend.

15,666. I tell you, Secretary of State, why I am asking this question. When this question was discussed in the Legislature I raised the question whether we could not make a condition as regards the employment of a certain number of Indians in these industries. Some industries may be started and foreign labour

may be imported. I am not suggesting that it is probable to-day, but it may happen that foreign labour may be imported. I therefore suggested that one of the conditions should be that not more than a certain percentage shall consist of foreign labour. Would such a condition be inconsistent with what you are proposing to do?—I do not think it would be inconsistent with these conditions, but I do not want it to be thought that we wish to go outside the general scheme of the Report of the External Capital Committee. I should have imagined myself that the real safeguard against any fear of that kind in the case that Mr. Joshi has just suggested is the universal feeling in India. I cannot conceive myself of any Government here or anywhere else giving a subsidy to a Company for the encouragement of its internal development and allowing the work of the Company to be carried out by imported labour. I should have thought myself that public opinion would have been so strong as to make the immigration of that kind of labour quite impossible.

• *Mr. M. R. Jayaker.*

15,667. Now take a condition like this, Sir Samuel : that a certain proportion of the capital should be offered for subscription in India. You would not regard that condition as inconsistent with the scheme of the Report, would you?—I would not like to commit myself to an answer Yes or No, but I will take account of what Mr. Jayaker has said.

*Sir Hubert Carr.*

15,668. May I ask one question with regard to that? Speaking from memory, does not that Committee report very definitely against a special allotment of capital to any special body of people, Indians or otherwise?—I should like to look up the Report before I gave an answer upon that point.

*Mr. M. R. Jayaker.*

15,669. Then you are aware that at the present moment the Indian Legislature has the right and has exercised the right to attach such conditions whenever bounties are given to any Company, whether that Company is existing or future?—Yes.

15,670. I am asking you this : In your scheme you limit the right to attach these conditions only to those Companies which are incorporated after the Subsidy Act?—Yes.

15,671. Now supposing there is an old Company which is a Company which was existing at the date of the Subsidy Act and it refuses to change with the nature of the times, for instance it refuses to allow Indians to become Directors; it refuses to allow Indians to become shareholders; it refuses to change with the spirit of the times, and it applies for a bounty out of the national funds : what equity is there that under your scheme it should be entitled to receive this bounty and support from national funds, while all the time it keeps the nationals out by refusing to allow them to become Directors or shareholders? What equity is there that it should receive money from the Indian taxpayers and yet refuse to allow the Indians to come in at any door?—The equity is really founded upon what I said yesterday, that I do not think it would be fair to impose new conditions. The conditions would be new conditions owing to the change of government. I would say that the alteration in the form of government did materially alter the position. That being so, we felt it was fairest to leave existing Companies untrammelled by restrictions of this kind.

15,672. I quite agree with the principle so far as they exist and the rights of these Companies are concerned. I can see the principle although I may differ from it; but if the Company applies for funds or applies for money, do you mean to say that the man who pays the money has no right to say and the Legislature which pays the money has no right to say, "If you want help from Indian funds you must take in Indians"?—Mr. Jayaker will remember that the object of bounties and subsidies is the encouragement of Indian trade and industry. Can you really draw the distinction between one Company and another as a result of the particular kind of Board of Directors which they have got or their shareholders, when each of them is equally encouraging Indian trade and Industry?

15,673. Perfectly true, but is not the taxpayer who pays the money entitled to say that as between two British Companies one of whom is changing with the times, allowing Indians to come in and so on, and another British Company, both existing at the date of the Subsidy Act I will assume—one British Company changing with the times; it has allowed Indians to come in; Indians are getting experience of trading and management; and another British Company which bolts its door and says, “No, hands off”—why should not the Legislature say as between the two Companies, “We think Indian industry is more encouraged by the Company which has changed with the times and is not encouraged by the Company which refuses to change with the times, and therefore we shall give our money to the Company which is helping Indian Directors”? What is there wrong in such an attitude?—To say what is right or what is wrong is a practical question, and I cannot see myself how, when the object of the bounty or the subsidy is the encouragement of Indian trade, you can draw distinctions between one Company and another.

Sir *Joseph Nall.*] Ought not some consideration to be given to the Company which is already established and is employing Indian labour? Would it be fair to prejudice the further employment of that labour merely to get another Director nominated to the Board?

Mr. *M. R. Jayaker.*

15,674. It would certainly get a long way in favour of a Company which is taking in Indians and training them, but it comes to this, Sir Samuel, that the Indian taxpayer, although he pays the money, has no right to attach conditions that his countrymen will be taken in and taught the industry or anything of that kind?—For future Companies and not existing Companies. May I remind Mr. Jayaker that this is again, as far as I remember, the explicit proposal of the Report of the External Capital Committee?

15,675. I know; it is also the specific proposal of the Round Table Conferences, but we all differed from that, you know, Sir Samuel?—I would not say all.

15,676. At least I did. I am merely painting it out on grounds of equity. Why cannot the Indian Legislature say this: “We will give you money provided you help the Indians to become trained,” or anything of that sort?—Let Mr. Jayaker again, just as I asked Sir Phiroze Sethna a minute or two ago, look to the alternative, the alternative in which restrictions of this kind could be generally imposed. The effect of that might be commercial discrimination of the most extreme form against British Companies.

15,677. How?—In the form of granting subsidies. Take the case that Sir Austen Chamberlain mentioned yesterday; take the case of shipping. The procedure suggested by Mr. Jayaker might be used for destroying the British Shipping Companies altogether.

15,678. It is one discrimination as against another discrimination. Discrimination meets discrimination. The Company discriminates against Indians, the Legislature discriminates against that Company. Discrimination often cures discrimination?—There again I do not agree. I put the discrimination he has mentioned, namely, the insistence upon a particular kind of Board, upon a very different level from the kind of discrimination which is going to destroy the whole of a great shipping industry.

15,679. I do not wish to carry the point any further, but I am taking the case of a Company which discriminates against Indians and which continues to discriminate against Indians. I ask you why should not discrimination of this kind be met by another kind of discrimination by the Legislature in order that that discrimination might be cured? I think Mr. Jayaker has made his point perfectly clear to me at any rate, and we must take it into account. I also have made my point clear, whether they agree with it or whether they do not.

Mr. *Hubert Carr.*] Might I suggest to the Secretary of State that this question of the employment of Indians really seems more theoretical than practical. I do not know of any concerns out there who are importing English labour at high cost when they have got Indian employees possible on the spot.

Mr. M. R. Jayaker.] I did not take the instance of labour. That was Mr. Joshi's point. I took the point of the refusal to take in Indian Directors.

Sir Hari Singh Gour.] And apprentices.

Sir Austen Chamberlain.

15,680. Secretary of State, in the argument you have been conducting with Mr. Jayaker you have defended the prevention of this discrimination against an existing Company. Am I right in understanding from your answers to me yesterday that any such discrimination would be permissible in regard to a future Company non-existent at the moment when the Subsidy or Bounty Act was passed?—Within the limits of these Clauses, yes.

Mr. M. R. Jayaker.

15,681. One of the last questions I wish to put to you is this, Mr. Secretary of State: Your attention was drawn by Sir Phiroze Sethna to cases of unfair competition. They are rare, but still they are there?—Yes.

15,682. Generally what happens is that a strong Company, strong in its public support, strong in its capital and strong in its Directors, makes it impossible for a new Company—I am not saying necessarily Indian, it may be British and Indian—to come into existence or to prosper. The way they generally do it is by offering very favourable terms and by having rates which cut the throat of the other Company. I can give you a case which I am sure you must be aware of, of a Company which took its passengers free and in addition to that it gave them clothes or a pair of dhoties to wear?—I believe it was an Indian Company.

Mr. M. R. Jayaker.] I will not say whether it was Indian or British, but the Company was there.

Sir Hari Singh Gour.] And handkerchiefs.

Sir Phiroze Sethna.] And packets of sweetmeats.

Mr. M. R. Jayaker.

15,683. I want to know whether you do not think that in a case of this kind

there ought to be some legislation by which the Legislature would bring pressure to bear upon such a Company which made it possible that terms of equality and equal competition may be established between the strong Company and the weak Company which is just struggling into existence, apart from racial questions?—I should have thought that if there are cases of that kind they would be dealt with by local legislation, legislation against trusts and so on. I do not see how they come into this category of cases.

Sir John Wardlaw-Milne.

15,684. I would ask the Secretary of State whether, in giving that answer, he is aware that exactly the same conditions applied in this country in living memory in which not only were fares free between this country and Ireland, but presents were given to people going on board?—It does seem to me very difficult to restrict competition by this kind of Constitution Act.

Mr. M. R. Jayaker.

15,685. The most effective way for the Legislature would be by using some kind of discrimination to prevent this unfair competition. If we are agreed that it is necessary that such unfair competition should be prevented, then the question is how to do it, and the easiest way would be to leave the Legislature freedom in this exceptional case to pass a measure which may look like discrimination. That is what I am suggesting to you, but what discrimination is there to prevent such unfair competition as you have submitted for our consideration?—I think the great safeguard really judging from the experience of most countries in the world is that that kind of rate-cutting competition in the end is uneconomic. Certainly from my own knowledge, I can think of many cases in the last few years in particular in which companies have tried that kind of policy, and within my own knowledge it has time after time failed.

15,686. The company I have in view is very prosperous, Sir Samuel. It has not failed at all?—I was also thinking of an Indian Company. Mr. Jayaker, and if my information is correct, that

kind of policy has not answered and there is now a change taking place.

Archbishop of *Canterbury*.

15,687. May I ask a question, Secretary of State: Supposing the Legislature brought in some Bill to deal with this kind of abuses which Mr. Jayaker has mentioned, it would be open to the Governor-General to decide that they were not discriminations of the kind contemplated in these proposals?—That is so.

Mr. M. R. Jayaker.

15,688. But that does not meet my point because your proposal, Secretary of State, is to make the act automatically invalid. The Governor-General's interference comes under his special responsibilities under paragraph 18. That only applies to non-legislative discrimination. Legislative discrimination, according to your proposals, is declared to be void. The Governor does not come in there, Sir Samuel. The Act itself is void, *ultra vires* the Indian Legislature?—But, surely, the position is this, Mr. Jayaker, that in these clauses we are attempting to deal with commercial discrimination and nothing else. The kind of cases that you have mentioned fall into another category of case and they would have to be dealt with, say, in the way in which the American Federal Government has attempted to deal with rates, trusts, and so on. In the second alternative, as His Grace has just said, the Legislation might well go through as not trenching upon the field of commercial discrimination.

15,689. But that will not depend upon the Governor-General's decision; that is what I am pointing out; it will be a question for the Federal Court to decide. Supposing somebody challenges this legislation as being *ultra vires* the Legislature, the Governor-General will not come in; it will be a question for the Federal Court?—Yes.

15,690. That is what I am pointing out in reply to His Grace's question: That the Governor-General's special responsibility comes in when questions of non-legislative discrimination are concerned; questions of legislative discrimination go to the Court. They do not come to the Governor at all. That

is the position here. Either it is a valid act or a void Act. In either case it must go to the only body competent to decide the question, which is the Federal Court. The Governor does not come in?—Yes.

15,691. Then the last question I want to ask you is with regard to sub-paragraph (viii): "There are, moreover, certain points which are definitely not covered by the general provisions outlined above, e.g., there is no provision safeguarding ships registered in United Kingdom ports. It is also desirable to secure the right of United Kingdom ship-owners to employ in Indian trades officers holding United Kingdom certificates of competency." I follow that principle, but what will be the position of British ships which take part in the coastal trade of India which discriminate against Indian qualifications? Would that be equally prevented? Ships which carry on the coastal trade of India, and therefore which benefit by Indian custom and by Indian support, but which discriminate in the sense that they refuse to employ pilots or officers, medical or otherwise, with Indian qualifications; they discriminate against Indian qualifications; how will that case be met? I see you have met the case of discriminating against British qualifications?—But that, surely, is a case of private rather than of Government discrimination. I am not in any way making an argument for companies which do not employ British labour, but it does seem to me very difficult to restrict the right of contract of a company to employ the people it wishes to employ. After all, the safeguard is that it is reciprocal, Mr. Jayaker.

15,692. Yes, I see that; but I see only one part of it is met by your proposal. The other part is not met by the proposal, and I want to know, in such a case, whether the Legislature would have some right?—Take the case of shipping; it would be difficult to say that a shipping company should employ such and such a number of British or Indians; it would be difficult for a British company to be forced into an obligation of that kind. I imagine it would be equally difficult for an Indian company to be forced into it.

*Sir John Wardlaw-Milne.*

15,693. May I ask the Secretary of State on that, before he finally replies, is not it open under this clause for an Indian-owned shipping company to employ nothing but Indian qualified officers if they chose, just as a British company could?—It is so, and it is with that fact in mind that I just gave the answer to Mr. Jayaker: that our arrangement was a governmental arrangement founded upon reciprocity, and we are not attempting to interfere with the private right of contract either in the case of the British or of the Indians.

Earl Winterton.] Might I venture to bring out another point in connection with this? I venture to suggest that by the proposal Mr. Jayaker makes, the aims that he seeks will not be reached, because if you were to make it a matter of governmental action in the case of these ships the Government might also take action in this country; it might take such action as not to allow Lascars to be employed in P. & O. ships. There was very strong pressure of that kind at one time. Up to now it has been resisted by successive British Governments.

*Mr. M. R. Jayaker.*

15,694. Then the sum total of your proposal, Sir Samuel, is this, very briefly: that the Indian Legislature will have no right to see that certain important key industries, which, by reason of the importance of the manufactured article, or the importance of the times through which they are passing, should be left entirely in the hands of Indian nationals?—I am always rather nervous in answering questions about key industries—

15,695. Vital industries?—because I never know exactly what is in the mind of the questioner. Here we understand by key industries a few industries devoted to producing particular commodities that are necessary for defence; we do not go further than that. I am not quite sure whether Mr. Jayaker means that.

15,696. I am taking the expression from your Key Industries Act, Sir Samuel. You have got an expression in that Act which is on your Statute Book?

—The Key Industries Act is restricted to a very few necessities of war, if I remember it—nothing else.

15,697. It might be optical glass in India; it may be something else; but I take the definition from you: articles which may have an importance owing to the emergency through which the country is passing?—The contingency is war in this case.

15,698. The scheme leaves no power in the hands of the Indian Legislature so as to arrange matters that industries which it regards for the purpose of defence or for self-protection as necessary and vital should be left entirely in the hands of Indians?—Mr. Jayaker, I understand, accepts the definition that we have here of Key Industries, namely, a very restricted definition. I should have thought in that case what is really important is that these particular things that are necessary for Indian defence should be made in the country. That is the whole basis of our Key Industries Act. If they are made in the country it does not seem to me to matter whether they are made by a British Company or an Indian Company. What does matter to India is that these goods should readily be available there and that India is quite certain of having them at the moment of emergency.

*Lieut.-Colonel Sir H. Gidney.*

15,699. My Lord Chairman, my questions will only refer to paragraph 6 of the Memorandum regarding the professional qualifications, and the Secretary of State said that he would have something to say upon that subject in the course of his evidence?—Yes.

15,700. Would it be appropriate to ask you that now?—Yes, I do not mind, Sir Henry.

15,701. Continuing what Mr. Jayaker has referred to, Secretary of State, regarding the discrimination of employment, we will take, for instance, British ships. It is a well-known fact that British shipping refuses to employ any but British labour in certain of its departments, the reason being that they insist upon certain standards of examinations which are obtainable only in England; to quote one case; the Board of Trade. To my mind, it seems that



this places the Indian and those who are trained in India at a distinct disadvantage, especially in those British companies who have a big coastal traffic in India. Would the Secretary of State agree with me that one of the ways of countering this disadvantage is by having examinations equal in India as in England—in other words, following that benevolent act of reciprocity? In that case we would have an examination equivalent to the Board of Trade in India as we have in England, so as to allow British or Indian companies to select their employees as they want?—It is difficult for me to give a general answer dealing with a lot of rather technical features like the qualifications of the professions, but, speaking quite generally, I should be in favour of that line of advance. Sir Henry will remember that it is actually what is happening now with some of the pilots of India. I understand the Hooglie pilots are mainly being trained in India.

15,702. The apprentice pilots are to-day being taken from the "Duffryn," which was never done before, and that is certainly, as the Secretary of State states, a line of advance, but that only touches the fringe of the subject. I am talking about the ships which trade along the coasts of India and Burma. I know that some companies do employ certain statutory Indians and Indian Indians, but it is a hard and fast law that any shipping coming from India to England gets rid of its Indian nationals and re-employs Europeans; in other words, there seems to be a distinct racial discrimination in even the passage of these officers to India?—But would not there be the same discrimination in the Indian lines against British employees?

15,703. I do not think it is there because the few Indian lines that do exist to-day have both British and Indian officers. I think they take the cheapest and the best?—Here again the difficulty is that it is not a Governmental arrangement. This is really a question of private contract.

15,704. I quite agree?—That does not mean that I am in favour of any racial discrimination; I am not; but what I am saying is that it is very difficult to deal

with a situation of that kind by legislation.

15,705. I stress this point to implement what Mr. Jayaker said. There is the practice of racial discrimination by Shipping Companies in England, and that will be allowed to continue, and India will have no way by which she can force her voice and have that checked and stopped. It will continue *ad infinitum* because, as I say, of this inequality of examination and qualification?—I should like to know more of the detailed facts of the position, both in the British and the Indian lines, before I accepted a very general statement of that kind.

Lieut.-Colonel Sir H. Gidney.] I think it is quite right. Would it be right if I asked the Secretary of State whether I can refer either briefly or in full to some points as regards the medical profession?

Sir Phiroze Sethna.

15,706. That is reserved to a later date, is it not, Secretary of State?—No; I did not make any suggestion one way or the other about the medical question, did I?

Lieut.-Colonel Sir H. Gidney.

15,707. Secretary of State, will we have another opportunity of taking this as a whole? It is no use taking it piecemeal? I do not mind whether we take it now or later.

Sir Austen Chamberlain.

15,708. Did not you ask that we should not now discuss the medical profession because negotiations are going on?—Yes, but I am now ready at the proper time. I do not suggest that this is the proper time to make a statement, but I think, perhaps it might be best if, before I made a statement or answered questions, I should circulate a memorandum; but I am in the hands of the Committee. If they like to go on with the examination now, I am ready.

Lt.-Colonel Sir H. Gidney.] I would rather defer my questions.

Mr. N. M. Joshi.

15,709. May I ask the Secretary of State the exact meaning of the words "British subjects" domiciled in the United Kingdom? What do you mean

by "domiciled in the United Kingdom"—a resident of the United Kingdom?—The lawyers tell me that there is no such thing as United Kingdom citizenship or United Kingdom nationality. You therefore have to make it clear that the British nationals about whom we are talking are British nationals whose domicile is here. That is the reason why the addition of "domicile" is put in.

Mr. N. M. Joshi.] In reply to Mr. Jayaker, you said that there is the difficulty of excluding the Colonials. This right does not apply only to Companies. Paragraph 3 (ii) applies to British subjects domiciled in the United Kingdom. This refers to much more than Companies. My fear is that if you use the words "British subjects domiciled in the United Kingdom" without any definition, the Colonial British subjects will be included.

Marquess of Reading.] Only those domiciled in the United Kingdom.

Earl Winterton.] In view of the fact that, as great exception is taken in the Dominions to the term "Colonial" as is taken in India to the term "Native", could not we refer to these people by their proper name, namely, "Dominion British subjects"? That is the technical term.

Mr. N. M. Joshi.

15,710. What is the exact meaning of "domiciled"? Does it mean born in Great Britain?—Sir Malcolm Hailey is more of a lawyer than I am. He will tell you about domicile. (Sir Malcolm Hailey.) There are various ingredients in the legal composition of "domicile", but I think for the present purpose Mr. Joshi might take it that it means residence, very broadly.

Sir Hari Singh Gour.

15,711. Permanent residence?—Yes.

Mr. Zafrulla Khan.

15,712. The difficulty is, is it not, that it depends upon intention. Therefore, when the question arises it has to be judged whether a person is or is not domiciled in a particular place?—There are so many ingredients in it, but for Mr. Joshi's purpose I thought "resi-

dence" or "permanent residence" would be the best test.

Mr. N. M. Joshi.

15,713. In regard to paragraph 3, subparagraph (ii) (b), I want to ask you, Secretary of State, to give me some concrete instances of disabilities based upon, say, duration of residence or language. What sort of disability will be imposed which is based upon duration of residence or language?—(Sir Samuel Hoare.) Supposing, to take a very simple case, there was the intention in India to say that nobody could carry on business who had not an intimate knowledge of the 250 Indian languages or who had not lived there for 50 years.

15,714. I would draw your attention, Secretary of State, to the holding of property and the holding of public office, especially the holding of public office. If the Legislature makes a rule that, in order to be a member of a local district board, a man must be a resident in that district for one year, will that be a disability imposed upon anyone based upon duration of residence?—I should have thought a question of that kind is really a question of franchise. This does not affect electoral qualifications or qualifications for sitting in a public body.

15,715. "Holding a public office"; that is what you say?—Surely what is meant is this, that supposing two people are qualified, the one an Indian and the one a British citizen, living in India, provided their electoral qualification is correct, no distinction should be drawn between them.

15,716. What you really mean is that there should be no discrimination, but the paragraph, as it is worded, means that you will give protection against disabilities based upon duration of residence?—(Sir Malcolm Hailey.) Which paragraph?

15,717. 3 (ii) (b)?—That is not only referring to the holding of office; it refers also to other disabilities.

15,718. It refers to "a special form of protection for British subjects domiciled in the United Kingdom, in respect of the following matters (in British India): Taxation, travel and residence, the holding of property, the holding of public

office, the carrying on of any trade or business." My position is this, that, in certain matters, it will be justifiable to lay down certain conditions as regards duration of residence and even of language. If no disability can be imposed on these two grounds a certain amount of justifiable legislation will be prevented. (Sir *Samuel Hoare*.) Mr. Joshi, there is no intention under this paragraph of preventing a local body having its own qualifications for voting or for being a member. That must be really a question of franchise.

*Mr. N. M. Joshi.*] May I therefore suggest a change in the wording? You say: "against statutory disabilities based upon domicile." What you really mean is: "In the matter of domicile; in the matter of duration of residence"; that is, there is to be no discrimination, and one period laid down for Europeans and another period laid down for Indians. That is your meaning?

*Mr. Zafrulla Khan.*] There is no question of any period for an Indian. An Indian who was born there would be presumed to have an Indian domicile. He does not need to acquire an Indian domicile by residence in addition to having been born there.

*Mr. N. M. Joshi.*

15,719. Is the condition of residence in a particular district or Province an unjustifiable one?—If it is a matter of drafting I will look into it. Our intention, I think, is clear, and we do not want to go further than our intention.

*Mr. N. M. Joshi.*] I wanted to ask you a question which I have raised formerly in examining one of the witnesses. In India by a rule of the Foreign Department, Indians cannot be appointed to certain posts. The posts which I had in mind at that time were posts of those people who decypher Government codes.

*Sir Hari Singh Gour.*] The Cypher Bureau.

*Mr. N. M. Joshi.*

15,720. That has been done by a rule of the Foreign Department. The Foreign Department has the power, perhaps, under certain legislation, to

make such rules. This rule discriminates against Indians in favour of British subjects. I want to know whether the constitution which you are providing will prevent such kind of discrimination not against Britishers but against Indians. I am speaking of the Cypher Bureau in India. My question is that there is definite discrimination against Indians by rule in India?—Let me say at once that I do not know about these rules at all. I do not know whether there is such a rule or is not. In any case it would be an administrative arrangement within the Department.

*Mr. M. R. Jayaker.*

15,721. With all this talk of equality there are occasions when a country desires, on a very ticklish question, that certain parts of the administration or of industry should be in the hands of its own nationals. That is the point I am putting to Sir Samuel?—It is the point which Mr. Jayaker was putting to me, but another point that is worth remembering is that the point which Mr. Joshi has raised now does not really come into this provision at all, because here we are dealing with statutory disability. There is no question of statutory disabilities here.

*Mr. N. M. Joshi.*

15,722. Disabilities which are imposed by statute or regulations made under a power given by statute. I am coming to that point now; I shall tell you how. In paragraph 3, sub-paragraph (vii) (c), you are giving power to the Governors and the Governor-General to discriminate when there is a grave menace to the maintenance of peace and tranquillity. Under that clause a Governor-General may make a rule that to certain posts Indians shall not be appointed, but that only British-born subjects shall be appointed, so this would be a statutory disability?—It might equally be the other way round.

15,723. It may be the other way round; it is quite possible; but you are giving powers to the Governor-General to discriminate not merely against any community but even in favour of certain communities, and perhaps the point which I have raised

about the Foreign Department rule may be brought in under this clause. In spite of your constitution, the Governor-General may say that in employing Indians in the Foreign and Political Department there will be a grave menace to the peace and tranquillity, and, therefore, certain posts in the Foreign and Political Department cannot be held by Indians?—In any case, I do not see how you can deal with it by statute. Anyhow, we do not propose to deal with it by statute. Things of this kind must be a matter of office administration.

*Mr. Zafrulla Khan.*

15,724. If a provision of that kind were made by administrative rules, you would have no objection to that?—I cannot give an answer Yes or No to a question like that, because it must depend upon the case itself.

15,725. Supposing the Federal Government made it a rule that certain posts for certain reasons of secrecy or reasons of a political kind, should be held only by Indian-born Indians and that nobody should be recruited to those posts, would that be a kind of thing which you would think was discrimination and should not be permitted, or would you think that was the kind of thing which was done in the Foreign Department for certain reasons, and therefore should be permitted to the Federal Government, too?—I should say the case must be judged on its merits.

15,726. Would not the general provision rule it out altogether? Where is the discretion left to any authority, the Federal Government or the Governor-General, or anybody, to say that in certain cases and for certain reasons an exception may be made?—Surely a discretion must always reside in the head of any Department to say how his office shall be run. You do not deal with that by statute, either here or anywhere else. If it were found that the Minister or the head of a Department was making discrimination in the administration of his Department, then the case would come within the field of the Governor-General's special responsibilities, and he would have to decide.

15,727. I am afraid there is some confusion between the two kinds. Supposing a Minister, in passing his orders or making any appointments which may be in his gift, actually makes discrimination, no doubt the Governor-General would intervene and say: "You are discriminating and it is my special responsibility to see that that is not done," and he can intervene?—Yes.

15,728. What I am saying is would it be possible to have rules permitting discrimination for certain good and valid reasons, and would not this rule be automatically involved under the provisions you are putting in your Memorandum, whereas, on the other side, there is the discretion that where discrimination may be desirable it would be permissible either with or without the permission of the Governor-General? Would not the effect of the provisions you want to put into the Constitution Act be that such things are automatically involved, even if the Governor-General has agreed that they are valid and there are good reasons for them?—I will look into the position again with my advisers, but my own view is very definitely that you cannot deal with matters of this kind by Statute.

15,729. True; therefore, all we are pressing for is that your Statute should be so framed that this kind of discrimination that may be desirable should not be ruled out automatically by your Statute?—I see. I will take note of this point, and I will look into it again with my advisers.

*Sir Austen Chamberlain.*

15,730. Secretary of State, could it, in your opinion, be held that the exclusion of a particular class from a particular office on the ground of the security of the State was discrimination within the meaning of your Paper, —No; it could not.

*Sir Austen Chamberlain.*] As I understand the questions, they relate to some occasions in which the security of the country is involved, and, in that case, I should have thought that the necessary course could not be held to be discrimination.

Mr. N. M. Joshi.

15,731. We were not dealing with individuals. We are dealing with classes?—Sir Austen's point, which I accept, is covered by sub-clause (vii) (c).

15,732. I want to know exactly what is the kind of scope of discriminatory legislation which the Governors and the Governor-General will pass; what kind of legislation do you envisage where the Governors and Governor-General will have the power to discriminate between various classes of British subjects?—I do not think we contemplate any legislation of that kind.

15,733. Then why do you give power to Governors and the Governor-General to discriminate between various classes of His Majesty's subjects?—The object of this is to deal with quite exceptional cases, Police cases, and so on.

15,734. I wanted to ask you one question about shipping. You are providing that there will be no Indian legislation insisting upon the employment of any people belonging to any race. You may be perhaps aware that Indian crews are not allowed under some kind of rule or regulation of the Board of the Trade here to be employed beyond a certain degree of latitude. I want to know whether that kind of discrimination against Indian crews will be prohibited under the kind of provisions which you are making?—The particular case that Mr. Joshi mentioned, I think, deals with Lascars, and it is a regulation made in the interests of the health of the Lascars.

15,735. Secretary of State, your advisers tell you that it is a regulation made in the interests of the health of the Lascars, but I have knowledge that neither the shipping companies in India, nor the Lascars in India want that regulation. On the contrary they have been agitating for some years to see that that regulation is terminated. It does not serve any useful purpose because, if Indians are not employed Malays and Chinese are employed in their place?—It is very difficult to go into a detailed case of this kind. I would have said that it does not come within the question of discrimination at all. This was simply, rightly or wrongly, a health regulation.

15,736. You are providing that there shall be no legislation passed discriminating, and, if there is any discrimination, it will be reciprocal. The Indian Legislature cannot pass any regulation saying that British sailors should not be employed in the Indian costal traffic. Similarly if Indian Lascars also desire that there should be no restriction on their employment, why should not such restriction be prohibited?—Mr. Joshi really is raising a case that I do not think comes into these categories of discrimination cases at all. I am informed, and I will confirm my information, that it is a provision, first of all, in the interests of health. We have no intention whatever of making it impossible that either the British Government or the Indian Government should issue health regulations, and, secondly, it is a case of private contract in which this condition, I am told, appears in the papers that are signed.

15,737. My information is that it is not private contract; it is a regulation of the Board of Trade here?—They are under the Indian Articles of Agreement. I should have used that phrase rather than the phrase "private contract."

15,738. They are based upon the statute, the Indian Marine Shipping Act. I do not wish to raise the particular question. I want to raise the Constitutional question, whether any discrimination can be imposed against Indians. That was the point. I want to ask you now one question about these restrictions against British subjects following certain prohibitions. The point which I want to put to you is this, that by putting down safeguards for the benefit of a few individuals as, for instance, Indians who will go to India as barristers, you are overloading the Constitution with safeguards. On that point I want to draw your attention to this fact, that there are many Indians who come to England and acquire those qualifications. My suggestion to you is this, that this very fact is a great safeguard, that there will be no legislation in India prohibiting them from following those professions, and if that is a safeguard, why should you overload the Constitution with more safeguards to facilitate the British subjects following some of the

professions in India ?—The reciprocity is certainly a safeguard. I fully admit that fact, but you do want this insurance against the misuse of powers in the future. I hope they will not be misused.

*Mr. M. R. Jayaker.*

15,739. I thought you were not asking for any safeguard in your Memorandum against professional qualifications ?—We are not. *Mr. Jayaker* is quite right.

*Mr. N. M. Joshi.*

15,740. In your paragraph 6, sub-paragraph (ii) you say : "preferably that the Constitution should provide that no law or regulations made in India for the purpose of prescribing the qualifications for any given profession shall have the effect of disabling from practice in India on the strength of his British qualification any holder of a British qualification" ?—(*Sir Malcolm Hailey.*) We say it has been proposed. There is no conclusion put forward in this Memorandum.

*Mr. Zafrulla Khan.*] The Secretary of State has not supported you.

*Mr. N. M. Joshi.*] I am not suggesting that you have adopted it. I wanted to ask you whether the adoption is not really necessary at all, because there are many Indians who have acquired those qualifications, and the fact that Indians would like to follow those professions in India is a safeguard in itself.

*Dr. B. R. Ambedkar.*

15,741. Just one question, Secretary of State, dealing with the exceptions in (c), "Special Powers", as I understand, the position is this : Generally speaking, the Legislature cannot pass a discriminatory Act. I am speaking quite generally ?—Yes.

15,742. Administratively the Government of the day cannot discriminate unless it satisfies the Governor that there is no discrimination in fact ?—No.

*Mr. M. R. Jayaker.*] The Governor-General.

*Dr. B. R. Ambedkar.*

15,743. The Governor-General or the Governor, because the proviso refers to both. That is theoretically and generally the position, is it not ?—Yes.

15,744. Now under sub-clause (c) the Governor-General will have the power to

pass a legislative enactment making a discrimination if it came within the terms of this proviso. I mean, this power you give to the Governor not only for administrative purposes, but also for legislative purposes ?—It is the general power under Proposal 18 of the White Paper.

15,745. Governing both ; so that the Governor may discriminate although the Government may not ?—For the prevention of any grave menace to, peace and tranquillity.

15,746. Yes. Now I want to ask what is the import of this. I will put one or two specific illustrations to see if that is what you mean. I suppose under this clause it would be possible for the Governor-General, by way of prevention of any grave menace, to say that certain persons shall not be employed in the Army. Would it be open to the Governor to do so under this ?—I suppose theoretically it would be, but the case would be very remote in connection with a grave menace to peace and tranquillity. I cannot, for instance, imagine putting the concrete case which is perhaps in *Dr. Ambedkar's* mind, a Governor-General saying that a proposal to start a unit endangered the peace and tranquillity of India.

15,747. I am glad to hear that. That is what rather disturbed me ?—I am not saying whether from a military point of view it would be a good or a bad plan but I cannot see that this would come within the scope of this safeguard.

15,748. Nor would it come within the special powers of the Governor in this clause to say that the Depressed Classes shall not be employed in the Police ?—No.

*Mr. M. R. Jayaker.*

15,749. I suppose it is quite clear from what you say in paragraph (vii) sub-paragraph (c) that this power of passing discriminating laws which the Governor-General employs will not be extended to Clauses (b), (c), (d), (e) and (f) of his special responsibilities under Proposal 18. It is only confined to Clause (a). Have I made my point clear ?—Certainly.

15,750. It is not extended ?—It is only confined to (a) here. Off-hand, I cannot contemplate the type of legislation that

might be necessary. I have not got anything in mind. I would have said you would have to take the power both for legislation and administration. I cannot conceive off-hand of the kind of legislation that might even be remotely needed.

*Sir Hubert Carr.*

15,751. Secretary of State, I would like to get clear in my mind one or two points with reference to paragraph 3 of your Memorandum. It is proposed that the Constitution Act should contain a general declaration, etc. That will not be so narrow as not to embody the general protection given in Proposal 122, will it? Proposal 122 gives protection against discrimination and enables generally civil rights to be held, but paragraph 3 seems to be much narrower—the general declaration which you have mentioned in paragraph 3?—Sir Hubert Carr must read the whole of the Memorandum together. I think then he will find that, instead of Clause 122 we have something more specifically defined in our Memorandum, namely, paragraph 3 (i), and then, instead of 123, again, we make our intentions more precise. We have done that for this reason, that as long as our intentions were in the general form in which they are in paragraphs 122 and 123, Indians were very suspicious of them because they felt that we were indefinitely restricting the power of the Indian Government, but I understood that also British traders were suspicious of them because they felt that they were not precise enough. The main object of our amended proposals is to meet those two anxieties, namely, by making our proposals more precise, to remove these suspicions both in India and amongst the trading community here.

*Sir Hubert Carr.*] Thank you. That was what I wanted to get clear. It is only making it more precise. It is not narrowing it in any way.

*Mr. Zafrulla Khan.*

15,752. I do not know whether Sir Hubert put a question to the Secretary of State or made a comment, or if he did make a comment, whether it was accepted by the Secretary of State. Sir Hubert Carr said: "I am glad to learn it is not for the sake of procedure and

does not narrow the scope of Proposal 122." It definitely narrows the scope of Proposal 122?—It narrows the form, but let me put it in the form of a concrete case, and Sir Hubert will see how necessary this narrowing was. A man who becomes a bankrupt should cease to be the director of a company: that is the kind of case. It was necessary, therefore, to restrict the provisions in such a way as to avoid preventing the Indian Government taking action. That I think we should all agree was quite necessary.

*Sir Austen Chamberlain.*

15,753. I understand, Secretary of State, you have not changed your purpose, but you thought your original words were not apt for the purpose?—Certainly, the purpose remains just the same.

*Mr. M. R. Jayaker.*

15,754. But in certain matters it does go beyond Proposals 122 to 124. For instance, in that much disputed clause (iv), the *ipso facto* clause, I find there is no provision between Proposals 122 and 124 which has the same effect as this proposed clause will have?—It is assumed to be in Proposal 122.

15,755. It is assumed, I say, but it is not clear whether Proposals 122 to 124 go the length of saying what you say in the proposed clause (iv)?—No, it is just a case of that kind that shows the necessity of being more precise.

*Sir Hubert Carr.*

15,756. Then the commercial discrimination, which is a special responsibility of the Viceroy, will include such items as are set forth in your paragraphs 3 (i) and (ii)?—Yes.

15,757. The next point I wish to ask you about is with reference to language. I fully recognise that the English language alone will not be sufficient to qualify anyone domiciled in the United Kingdom for all posts in India, but is it intended that, English, as the official language of the Federation, shall be sufficient, and that any other language test that may be required for a certain post shall be recommended by the Governor-General; any legislation allowing for an extra language shall be with the prior consent of the Governor-General?—

By Clause 3 (b) we mean a man's natural language. We cannot discriminate between him and another man on the ground of his own language. When it comes to a question of changing the official language—is that Sir Hubert Carr's point ?

*Sir Hubert Carr.*] May I illustrate it by what is in my mind : Supposing there is a post in Madras : a man with knowledge of the English language applies for it, and the Government passes legislation to the effect that nobody who does not know Telugu and Tamil, in addition to English, shall be eligible for that post. My suggestion is that such legislation should be with the prior assent of the Governor-General, so that it may avoid any easy method of discrimination.

*Dr. Shafa'at Ahmad Khan.*] He must have a knowledge of English in any case.

*Sir Hubert Carr.*

15,758. Yes ; that is the official language ?—*Sir Hubert Carr* will see that it is a difficult question to deal with by legislation ; he would, I think, agree with me that a knowledge of certain Indian languages would be necessary in certain cases. I think we are all agreed about that.

15,759. Absolutely ?—That being so, I should have thought the wisest way to deal with it was to deal with it in the general category of discriminatory cases. Take the case upon its merits with the Governor-General's power and the Governor's power to intervene in a case of definite discrimination. I think it is very difficult to deal with a case of that kind other than on its merits.

*Mr. Zafrulla Khan.*] Surely in the case that *Sir Hubert* put it could not be said that it was discriminatory. That would keep you out and keep me out, and it would necessitate if you and I wanted to apply for that post that we must learn Telugu. Where is the discrimination ?

*Mr. M. R. Jayaker.*

15,760. It is discrimination against the whole of India except Madras ?—Does not that all go to show that you had better deal with cases of that kind on their merits ?

*Sir Hubert Carr.*

15,761. I quite agree ; but in answer to *Mr. Zafrulla Khan*, that is exactly the kind of legislation which I gather is referred to in Clause 3 (vi). It might be discriminatory although not on the face of it discriminatory ?—Paragraph (vi) deals with legislation. A case of this kind I think almost inevitably will be administrative.

*Dr. B. R. Ambedkar.*] Take, for instance, the case of a school teacher appointed in a training school to train teachers who are to teach in vernacular schools ; such a man must know the vernacular in order that he may be in a position to train the teachers who come there.

*Sir Hari Singh Gour.*] And also in the case of an interpreter ; he cannot be an interpreter unless he knows the language.

*Sir Hubert Carr.*

15,762. In putting the question I fully realised the difficulties, and that is why I asked whether it was intended that the Governor-General should give his prior assent rather than try to make a statutory rule which I think would be impossible ?—I do not think you can deal by prior assent, *Sir Hubert*. I think in nine hundred and ninety-nine cases out of a thousand it will not be a case of legislation at all ; in fact, I am not sure that in a thousand cases it will not be administration. That being so, I think you must depend upon the case being dealt with on its merits by the Governor-General and the Governor under their special responsibilities.

*Sir Hari Singh Gour.*

15,763. But are they not special cases of discrimination ?—I think they are, I think they always should be ; but supposing unscrupulous people used them as a lever for making political discrimination, then it would be a case for the Governor to intervene.

*Dr. Shafa'at Ahmad Khan.*

15,764. These cases are purely administrative acts, and you cannot expect the Governor-General to intervene in these matters.



Sir Hubert Carr.

15,765. The next point I wished to ask was, when an aggrieved party, Indian or English, goes to the Governor-General, it was suggested by the Associated Chambers of Commerce that that aggrieved party should have the right to demand an Inquiry, and the evidence rather went, if I may remind you, to the effect that perhaps it was not wise to allow them to demand an Inquiry. But would the proposals envisage some reference to the possibility of an Inquiry being ordered as I would suggest, that if, as we hope, matters run smoothly, and perhaps for two or three years there will be no cases brought to the notice of the Governor-General, then when a complaint is made unless some reference to his power to direct an Inquiry is made in the Act such a method of procedure might be overlooked?—I am not myself very much attracted by the idea of putting the possibility of an Inquiry into the Constitution Act. The Governor-General is free to have an Inquiry when he thinks fit; his hands are untied, and I would have thought myself from the point of view of British traders they would be unwise to insist upon one particular kind of Inquiry. The mere fact of mentioning it in the Constitution Act might make it appear to be the normal course to be taken, and I should have thought that from their point of view the normal course had much better be something of a more expeditious character. When you talk about an Inquiry in an Act of Parliament it means rather a formidable affair; a number of people are appointed, taking weeks, it may be months, to come to a decision and so so. I should have thought myself (I do not want to dogmatise upon a point of this kind), that elasticity and freedom in the hands of the Governor-General were really the better course.

15,766. My point in asking the Secretary of State whether he would consider that is because the complaint, for instance, might be against a Minister, and it is obvious that no inquiry could be brought about except by appointing probably a High Court Judge or somebody of that kind in an independent position, and it is just to indicate the possibility of an Inquiry. Otherwise

one is a little inclined to fear that after two or three years of plain sailing and a complaint is made, the Governor would very naturally ask his Minister if there was any reason for the complaint, and if he told him 'No' he might be satisfied?—We can certainly take the point into account. As I say, I am not much attracted by it, but we can discuss it later on.

Mr. M. R. Jayaker.] I want to ask Sir Hubert Carr in the interests of the British trader which he thinks is better: that the Governor should decide this question after making a secret investigation or that there should be an open public Inquiry where evidence should be given on both sides, and agitation will grow up on both sides?

Sir Hubert Carr.

15,767. In answer to that, I would say the class of Inquiry I had in mind was the Governor appointing one man in whom he had confidence to go and investigate the cause of the complaint, which might lie three or four hundred miles away from the Governor's seat?—He can do that. I would say that would be a much more expeditious way than having something in the nature of a Royal Commission or even a Joint Select Committee.

15,768. Now may I refer to the position of Dominion subjects in India. As I understand it, India will have the right to make agreements with the Dominions with reference to the entry of their subjects, but I am referring to those Dominion subjects who are already in India holding positions. I imagine that those men when they go on leave, for instance, will have the right of re-entry irrespective of any arrangements which may be made between India and the Dominion thereafter?—I think in cases of that kind there must be an agreement. I have made enquiries, and what I understand happens in Australia is that the return of people from leave is not regarded as a new entry. They have a system of passes that admit of that, and I imagine that that is what would happen in the Indian case as well.

15,769. Then there is no reference in the Memorandum to the question of confiscation which is referred to in para-

graph 75 of the Introduction. I take it that that will be a special Part of the Act, but it does not come under this proposal?—We have always assumed that somewhere in the Act there should be a Clause prohibiting confiscation, expropriation, and also dealing with compensation.

*Dr. Shafa'at Ahmad Khan.*

15,770. That will be in the Act?—I think so, probably.

*Sir Hari Singh Gour.*] One of the fundamental rights, perhaps.

*Dr. Shafa'at Ahmad Khan.*] Yes.

*Sir Hubert Carr.*

15,771. Then may I refer to a question which I was allowed to ask as a supplementary question yesterday regarding the position of the professions. The British community in India do feel that this is really a very important matter, and while recognising the difficulties which you pointed out yesterday, I would suggest that it might be possible to arrange that qualifications received in England for the identical purposes for which future Indian Legislatures might demand qualifications should carry in India?—*Sir Hubert* means, does he not, that the basic qualifications should be accepted on both sides?

15,772. On both sides, yes?—Yes. Then that there should be a latitude for imposing reasonable local conditions over and above that?

15,773. Yes. We feel that there could be no objection to that. It must be necessary that there may be certain overriding qualifications required by Indian Legislatures, but what the British community particularly wish to avoid is that having gained qualifications for a specific object here, when they go to India to practise, to put into action that object, they should not have occasion to qualify under Indian rules?—That would appear to me to be a very reasonable request. The difficulty is to put it into a precise form without unduly tying the hands, either of the British Government or of the Indian Government. *Sir Hubert* has been kind enough to give me a form of words. I will look into that form of words. Off-hand, I do not think

it quite meets his point, but I think it is the general desire of everyone that it should not be necessary either for an Indian coming to Great Britain or an Englishman going to India to have to do all his basic examinations over again, taking an extreme case, but that there should be this latitude for local conditions.

*Mr. M. R. Jayaker.*

15,774. I hope the Secretary of State will make it clear at some stage that he does not regard conditions like that as discrimination. Take, for instance, the case in this country; you make it necessary that any person who comes to practise here as a medical man should know English. That would not be regarded in India as a discrimination because it is a necessary condition which makes for his living here. Therefore I do hope the Secretary of State will make it clear that when he uses the word "discrimination" he has not in view conditions of this character. For instance, a police officer should know Mahratta if he is working in the Mahratta country, or the language of that district?—Yes; I agree with *Mr. Jayaker* that somehow or other we have to make a distinction between discrimination and necessary qualifications.

*Sir Hubert Carr.*

15,775. There are many points of very deep interest, of course, to the British community in India in connection with this question, but from Section 29 of the White Paper I understand that it is the intention of Government to lay down in the Act that British subjects trading in India shall in no case be in a less favourable position than Indians. That is the principle for which we strive, and I should like to know whether it is accepted in the White Paper?—The principle of paragraph 29 of the Introduction?

15,776. Yes?—That is certainly so, and our proposals are based upon this theory and practice of reciprocity.

*Sir Hubert Carr.*] That is all I have to ask, my Lord Chairman.

*Chairman.*] Thank you very much, Secretary of State; that concludes your evidence.

(The Witnesses are directed to withdraw.)