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1.

INDIAN ROUND TABLE CONFERENCE
(November - December 1932)

The attached points for discussion are circulated to the Lord Chancellor in order to assist the Conference in considering Head A of the Agenda.

(Sd.) R.H.A. CARTER,
Secretary-General.

Secretariat-General,
House of Lords, S.W.1.

19th November 1932.

HEADS FOR DISCUSSION ON SUBJECT A.

INDIAN FRANCHISE.

Method of election to franchise
for, and size of Chambers of
the Provincial and Central
Legislatures.

The method of election to and the franchise for the Provincial Legislatures which are dealt with in the earlier part of this questionnaire are not of concern to the Indian States. This is equally the case as regards the method of election to and the franchise for the British Indian seats in the Federal Legislature. It is suggested that it would, however, be simplest to dispose of these points before going on to consider the size of the Chambers in the two Houses of the Central Legislature, which is a matter of equal interest to the Indian States and to British India.

The following heads of discussion are suggested:

(1) PROVINCIAL LEGISLATURES.

A. Method of Election.

The Lothian Committee reported that adult suffrage was impracticable at the present stage (Report, paras 16 - 39). They equally rejected after examination modifications of adult suffrage including systems of indirect election and also a franchise based on the combination of direct and indirect election (Report, paras 42-56). They recommended the extension of the franchise by the direct vote.

Shall the Franchise Committee's recommendation be accepted?

B. Nature of Franchise.

(i) Shall the essential basis of the franchise be the property qualifications proposed by the Lothian Committee (Chap. vii), subject to such modifications of detail as may prove necessary?

(ii) Shall the principle of an educational qualification

(Report para 83) in addition to property be accepted, subject to its application proving practicable in the varying conditions of different provinces?

(iii) If so, shall the qualification be the Upper Primary or corresponding standard?

(iv) The suggestion has been made, with a view to reducing administrative difficulties involved in the polling of the large electorates contemplated by the Lothian Committee, that registration on the basis of an educational qualification shall be dependent on application by the possessor at any rate in the initial stages of the new constitution.

Do the Conference accept this view?

WOMEN.

(v) In view of the fact that the general qualifications proposed by the Lothian Committee will enfranchise only a relatively small percentage of women, shall special provision be made to secure the presence of a larger number of women on the electoral roll?

(vi) If the answer to (v) is in the affirmative shall this be by means of differential qualifications such as suggested by the Franchise Committee, viz:

(a) An educational qualification.
(Report, para. 215)

If so, shall the qualification be mere literacy, as compared with the Upper Primary or corresponding standard to be required of male voters?

(b) the enfranchisement (Report, para.216) of wives and widows over 21 of men qualified by property to vote for the existing Provincial Councils - not more than one elector in addition to the husband himself to be enfranchised under the husband's property qualification, but widows who, during the lifetime of their husband, had been placed on the roll in respect of his property to retain their qualification

(vii) In view of the administrative difficulties anticipated in polling the large electorates concerned, shall registration on the basis of any such differential qualification if accepted be subject to application, at any rate in the initial stages, by the voter?

DEPRESSED CLASSES.

(viii) Since the general qualifications proposed by the Lothian Committee will enfranchise only a relatively small percentage of the Depressed Classes (Report paras. 302-307) shall special provision be made to secure the presence on the electoral roll of a larger percentage of the Depressed Classes?

(ix) If the answer to (viii) is in the affirmative,

(a) shall the percentage of Depressed Class voters to be aimed at be, as recommended by the Franchise Committee (Report, para. 315), 10% of the Depressed Class population in each province?

(b) Shall such be adopted of the differential qualifications consideration of which was suggested by the Franchise Committee (Report, paras. 308-315) as may be necessary to secure this result in the light of the varying conditions in each province?

(x) Shall the existing military service qualification for the franchise be retained? (Report: C. XIII, paras. 344-355).

(II) Federal Legislature.

Federal Assembly.

A. Method of Election to British Indian Seats.

The Statutory Commission contemplated a method of indirect election for the Central Legislative body. The present method of election is direct. The earlier session of the Round Table contemplated a form of direct election and this is recommended by the Lothian Committee (para. 404). What system shall be adopted?

B. Franchise for British Indian Seats.

(i) The franchise qualifications for the existing Legislative Assembly, for the present Provincial Legislative Councils, and for the new Provincial Legislative Councils have all been suggested at various times as the qualifications for the new Assembly. The Franchise Committee gave reasons for regarding the existing Assembly franchise as too small and the future Council franchise as too large. They recommended that the franchise for the future Federal Assembly shall be the existing franchise for Provincial Legislative Councils (with the supplements referred to below in respect of education and in the case of women and the Depressed Classes), save in the Central Provinces. In the Central Provinces, where the existing Council electorate consists of little more than one per cent. of the population, that the electorate for the Federal Assembly should be double the present Council electorate, and that the local Government should revise the franchise qualifications so as to ensure this result (paras. 409-411).

What are the views of the Conference as to the franchise to be adopted?

(ii) If the Conference favours adoption of the

franchise/

franchise described in (i), shall it be supplemented by a special educational qualification (Report para. 409), or application at any rate in the initial stages?

(iii) Women. Acceptance of the proposal in (i) will give the ratio of women to men electors very much as at present, i.e. approximately 1 : 20. The Franchise Committee (paras. 409-410) drew attention to this and proposed to deal with the point by establishing a differential educational franchise for women, the effect of which would be to raise the ratio of women to men to about 1 : 4.6.

Is so large an increase in the women's electorate desirable? If not, at what figure shall the ratio to be aimed between men and women voters be fixed?

Depressed Classes.

(iv) Depressed Classes.

Under the Poona Pact the Depressed Classes will be entitled to 18 per cent. of the general Hindu seats in the Federal Legislature. The Franchise Committee stated (para.420) that the Census Commissioner had expressed the opinion that, in addition, as a differential qualification of mere literacy to the ordinary qualifications proposed by the Franchise Committee for the general electorate for the Federal Assembly would enfranchise at least 2 per cent. of the Depressed Class population. They remarked that as they were proposing the enfranchisement of 3 per cent. only of the general population, they thought this proposal would for the present be adequate.

Shall the proposals of the Franchise Committee be accepted? If not, what alternative can be suggested?

Special Representation.

Women. The Franchise Committee recommended that one woman should be elected from each Province to represent the women's interests in the Federal Assembly and that she should be elected by the whole of the Provincial Council - men and women alike - in the Province concerned, the Council being free to

nominated for election without her own consent.

Do the Conference favour:

- (a) the proposed reservation of seats for women;
- (b) if so, the method of election suggested?

(ii) Labour, Commerce and Industry,

Landlords.

Do the Conference favour provision for the special representation in the Federal Assembly of

- (a) Labour
- (b) Commerce
- (c) Landlords?

by the special committee of the Council of Ministers

(B) Federal Upper House.

The principal question for decision, at this stage apart from size (see below), is the method of election to the British Indian seats.

Method of Election to British Indian Seats.

The Federal Structure Committee recommended that the British Indian section of the Federal Upper House should be elected by Provincial Legislative Councils by the single transferable vote. This recommendation was supported by the Indian Franchise Committee, who, however, drew attention to the difficulties involved in securing representation of small minorities.

Subject to a satisfactory solution of the question of small minorities, is it agreed:

- (a) that the method of election shall be as previously proposed by the Federal Structure Committee, i.e. by the Provincial Legislative Councils by the single transferable

vote/

vote;

(b) that if and when Provincial Legislatures are bi-cameral both Houses will vote in joint session to elect representatives to the Senate?

Size of Central Legislature.

The Federal Structure Committee, in their Third Report, recommended that "the Chamber should consist, as near as may be, of 200 and 300 members respectively, in which the allocation of seats to the States should be in the proportion of 40 per cent. (or approximately 80 seats) in the Upper Chamber and 33 per cent. (or approximately 100 seats) in the Lower Chamber". The Indian Franchise Committee, with a view to reducing the size of the constituencies and making them more manageable, recommended that the number of British Indian seats in the Lower House should be increased from 200 to 300. They recommended no increase in the number of British Indian seats in the Upper House, and made no comment as regards States seats in either House.

The following questions are for consideration:-

- (i) Shall the number of seats in the British Indian section of the Lower House be increased to 300 as proposed by the Franchise Committee, with a consequential increase to 150 in the number of the States seats?
- (ii) Does an affirmative decision on question (i) involve any alteration, and if so what, in the size of the Upper House?

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R.T.2.

INDIAN ROUND TABLE CONFERENCE
(November - December 1932)

The attached points for discussion are circulated by the Lord Chancellor in order to assist the Conference in considering Head B (a) of the Agenda.

(Sd) R.H.A. CARTER,
Secretary-General.

Secretariat-General,
House of Lords, S.W.1.

22nd November 1932.

HEADS FOR DISCUSSION.

B. (a) Legislative relations between Centre and Provinces.

Note. This group of Heads for discussion is not in any way concerned with Federal subjects in the narrower sense, since over the latter the jurisdiction of the Federal Legislature must necessarily be exclusive.

(1) Is the distribution of legislative powers to involve the allocation to the Centre and the Provinces respectively of a field (expressed in terms of subjects) in which each will exercise an exclusive legislative jurisdiction with the necessary general results

(a) that legislation by the Centre which trenches upon the Provincial field, or legislation by a Province which trenches upon the Central field, would be pro tanto ultra vires? and

(b) that questions of the validity of legislation on this ground would be matters for determination by the Courts?

(2) If the answer to (1) is in the affirmative

(a) will it be possible so to define and partition Governmental activities (expressed in terms of subjects) that the exclusively Central, and exclusively Provincial, fields together exhaust these activities? or

(b) will it be possible and desirable to

2.

leave a "common field", in which both Central and Provincial Legislatures have concurrent powers?

(3) What kind of subjects should be included in the common field? Could they be described generally as subjects in which uniformity throughout British India is desirable, but in which room for variation to meet local conditions is at the same time necessary?

(4) If so, which legislation is to prevail in the event of conflict - Central or Provincial?

(5) If the general principle is to be that the Central legislation is to prevail in cases of conflict, would the adoption of this general principle, without qualification or mitigation, be satisfactory from the provincial point of view? Could it appropriately be qualified by an adaptation of the device of "previous sanction" familiar under the present Indian Constitution, whereby a Provincial Act which conflicted with a Central Act prevailed over the latter in the Province if it had been reserved for, and received, the Governor-General's assent?

(This suggestion is put forward on the assumption that henceforth the normal rule will be that the Crown's assent to Acts will be accorded by the Governor in the case of

3.

Provincial Acts and by the Governor-General in the case of Central Acts and that the assent of the Governor-General to a Provincial Act will normally not be required).

(6) Could the device suggested under the preceding head be appropriately adopted without at the same time providing that the assent of the Governor-General to a Provincial Act, in the circumstances indicated, would be without prejudice to the power of the Central Legislature to legislate thereafter in a sense inconsistent with the Provincial Act - in which case the later Federal Act would necessarily prevail?

(7) If, on the other hand, the general principle is to be that the Provincial legislation is to prevail in cases of conflict, would any useful purpose be served by providing at all for a common field in which both Centre and Provinces would exercise concurrent powers?

(8) Would it be possible without providing for a field of concurrent powers, to secure, without prejudice to the claims of Provincial Autonomy, a sufficient measure of uniformity in matters on which uniformity is desirable

by giving the Centre an exclusive right of enacting general principles in respect of a certain group of subjects (e.g. those covered by the more important Indian Codes) and giving the Provinces an exclusive right of legislating on all matter of administrative detail connected with those subjects?

(9) Would the following method of providing for the objects described in (3) above offer advantages over other alternative plans:-

To draw up separately

- (i) A schedule of exclusively Central subjects;
- (ii) A schedule of Provincial subjects divided into two parts - Part I consisting of exclusively Provincial subjects and Part II of subjects which are to be described as being "subject to legislation by the Federal Legislature for the purpose of securing uniformity of law"

and to provide that, in relation to any matter not included in either the Federal or Provincial schedule, the Federal and Provincial Legislatures shall have concurrent jurisdiction?

(10) Would it be advantageous, whatever

decision may be taken as to a concurrent field, to provide that it shall be lawful for the Federal Legislature to regulate by its own legislation in two or more provinces any matter (or possibly any one of a specified group of matters) notwithstanding the fact that that matter, or that group of matters, has been allocated to the exclusive jurisdiction of Provincial Legislatures, if an application is made by two or more Provincial Governments for the enactment of such legislation by the Federal Legislature ?

Method of allocating subjects and question of "residual powers".

(11) It would be possible to distribute legislative powers (expressed in terms of subjects to which they are to relate) in various ways:-

- (a) By enumerating and defining those subjects which are to be allotted exclusively to the Centre and (if there is to be a concurrent field) those in respect of which the Centre is to possess the power (though not the exclusive power) to legislate, and having done so to provide that every subject not so enumerated shall appertain to the Provinces.

(This method would, of course, place "residual powers" with the Provinces).

(b) By the converse process of enumerating and defining the exclusively Provincial subjects and (if there is to be a concurrent field) those over which the Provincial Legislature is to possess concurrent powers; and then providing that all subjects not so enumerated and allocated shall appertain to the Centre.

(This method would, of course, place "residual powers" with the Centre).

(c) By scheduling separately the exclusively Provincial, the exclusively Central and the "Concurrent" subjects.

(If this method were adopted, the "residual powers" might be placed in any one of the three categories).

Which of these methods is to be adopted ?

If the third, or the plan described in (9) above, were to be adopted, in which of the categories - Central, Provincial or Concurrent - is the inevitable residue of unenumerated, imperfectly defined or unforeseen subjects to be placed ?

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R.T. 3.

INDIAN ROUND TABLE CONFERENCE.

(November-December 1932).

The attached points for discussion are circulated by the Lord Chancellor in order to assist the Conference in considering Head B(b) of the Provisional Agenda.

(Sd.) R.H.A.CARTER.

Secretary-General.

Secretary-General,
House of Lords,
S.W.1.

24th November, 1932.

HEADS FOR DISCUSSION.

B. (b) Administrative relations between
Centre and Units.

I. Relations with the Provinces.

Utilisation by the Federal Government of Provincial
Agencies.

(1) Is it agreed that the legal separation of the powers and functions of the Central and Provincial Governments, which is necessarily involved in the conceptions of federation based upon provincial autonomy, cannot, for practical and financial reasons, be taken as involving a breach with the traditional methods and machinery of Indian administration whereby the Central Government has habitually employed, as the agency for administering a large part of its functions, the ordinary provincial administrative staffs?

(2) If this is accepted, is it desirable that it should be made clear in the Constitution that, notwithstanding the terms in which it may be found necessary to partition Central and provincial spheres of government, it is none the less open to the Federal Government to devolve upon Provincial Governments, or upon any specified officers of those Governments, the exercise, on its behalf, of any functions in relation to the administration of any Federal or Central subject, wherever such an arrangement is found financially or administratively convenient, and that it shall be open to the Federal Legislature to make provision in its enactments accordingly?

(3) If an arrangement such as that indicated in the preceding head is accepted as appropriate and necessary, is it agreed that it would be at the same time necessary, in order to safeguard the financial interests of the Provinces, to provide that if, in virtue of the provisions of any Federal enactment or of any administrative arrangement between the Executives of the Federal and Provincial Governments, any extra charge is incurred by a Provincial Government on account of staff and establishment, that that extra cost should be borne by the Federal Government if the establishment is employed exclusively on the administration of a Federal or Central subject, but should be shared between the Federal Government and the Provincial Government if the establishment is so employed only in part?

Nature and extent of authority to be conferred on Federal Government to exercise control over Local Governments in their administration of Federal subjects or of Provincial matters affecting Federal subjects.

(4) (a) Is it agreed that however large the measure of autonomy conferred upon the Provinces by the Constitution, the concept of Federation involves the necessity of endowing the Federal Government with specific authority to ensure that Provincial Governments give due effect to Federal legislation and policy so far as these depend upon their own

administrative agencies?

(b) Will the Federal Government be sufficiently equipped with power to carry out efficiently the functions entrusted to it if, in addition to the authority to be conferred upon it as suggested in (a), it is not also equipped with authority to ensure that Provincial Governments so conduct the administration of their own Provincial subjects as not to affect prejudicially the administration of a Federal or Central subject?

Nature and extent of the authority to be conferred upon the Federal Government to control the administration by Provincial Governments of Provincial subjects.

(5) (a) Having regard to the facts that on the one hand Defence (which includes the maintenance of internal security through armed forces) is to be a Federal reserved subject, and that on the other hand the administration of the matters commonly described by the compendious term "Law and Order" will be a provincial responsibility,

(i) is every province to be independent and uncontrolled in the administration of the provincial subjects just described?

(ii) is some authority at the Centre to be empowered to exercise some measure of control to prevent the occurrence of

conditions which might endanger the internal security of India?

(b) If the answer to (a)(ii) is in the affirmative, could the Governor-General himself appropriately be vested with the requisite powers of control?

II. Relations with the States.

(6) Is it accepted, following the general principles suggested as governing the relations between the Centre and the Provinces, that the Constitution should specifically impose an obligation on the States' Governments to exercise their executive power and authority, so far as necessary and applicable, for the purpose of securing that due effect is given within their territories to every Act of the Federal Legislature which applies to that territory?

(7)(a) Should the Constitution recognise arrangements for the administration on behalf of the Federal Government by the States of Federal subjects in their territories through the agency of staff and establishments employed and controlled by themselves?

(b) If so, should such an arrangement be subject to the condition that the Governor-General should be entitled by inspection or otherwise to satisfy himself that an adequate standard of administration is, in fact, maintained?

5.

(8) What should be the counterpart in the States of the propositions indicated under paragraph (4) above? Should power be vested in the Governor-General to issue general directions to the Government of a State for the purpose of ensuring that it duly fulfils its obligations to the Federal Government arising under head (6) or (7) above?

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R.T. 4.

INDIAN ROUND TABLE CONFERENCE.

(November-December 1932).

The attached points for discussion are circulated by the Lord Chancellor in order to assist the Conference in considering Head C of the Provisional Agenda.

(Sd.) R.H.A.CARTER.

Secretary-General.

Secretariat-General,
House of Lords,
S.W.1.

28th November, 1932.

HEADS FOR DISCUSSION.

C. Special powers and responsibilities of the Governor-General and Governors.

(1) Proceeding on the basis

- (a) that executive power and authority will vest in the Crown represented in the Federation by the Governor-General and in a Province by the Governor (see paragraph 9 Second Report of the Federal Structure Committee);
- (b) that following the precedent of the written Constitutions of the British Commonwealth of Nations, the Governor-General (or the Governor as the case may be) will in law himself constitute the Executive for all purposes; and
- (c) that except insofar as otherwise provided the actions and decisions of the Governor-General and Governors will be performed or taken on the advice of their respective Ministers,

what is to be the nature and extent of the provisions to be made in pursuance of the words underlined?

Note. The foregoing question indicates in the broadest terms the problem arising under this head. In the questions which follow it is assumed that discussion will most conveniently proceed in relation primarily to the Governor-General, and that the same general principles will be followed in

relation to the Governors as to the Governor-General, with variations of detail when the facts to be dealt with necessitate this.]

(2) Is it agreed that constitutional requirements necessitate

- (a) that insofar as the Governor-General is acting without the advice of Ministers or otherwise than in accordance with their advice, he must be acting in responsibility to His Majesty's Government and Parliament in the United Kingdom; and
- (b) that the same principle will apply, in the case of the Governors, with the necessary consequence that it will fall to the Governor-General on behalf, and subject to the direction, of His Majesty's Government to supervise and, if necessary, direct the actions of the Governors which do not result from Ministerial advice?

[Following out the general principles indicated above, it is suggested that the problem of the Governor-General's special powers should be considered separately in relation to

- (a) the Executive, i.e. in relation to his Council of Ministers with

the reserved field; and
 (b) the Legislature.]

Governor-General's position as the Executive
 in relation to executive action and
 deliberations in the Cabinet.

(3) In previous reports of the Round Table Conference and in the Declarations of His Majesty's Government one method of qualifying the ordinary constitutional convention that all action of the Executive is the action advised by Ministers (for which Ministers and not the head of the Executive are responsible) has been indicated - namely that certain departments of State - the Departments of Defence and External Affairs - shall be reserved to the exclusive control of the Governor-General, assisted by persons acting under his immediate directions and responsible to him alone.

Is it agreed that the reserved field must extend to the Department of Ecclesiastical Affairs insofar as provision for chaplains, a large proportion of whom are required for ministrations to the Army, is not included under the Head Defence?

(4) Leaving aside the reserved departments ((3) above) and turning to the rest of the field of governmental activities, it follows from the principles indicated in paragraph 16 of the Second Report of the Federal Structure

Committee that the general constitutional convention indicated in (1) above must be qualified or limited in this sphere also. There appear to be three possible methods whereby this could be effected:-

- (a) by providing either in the Constitution itself or through the Instrument of Instructions from the Crown that the Governor-General is to use his own judgment in regard to matters on which advice is tendered to him by Ministers i.e. that he should be free to follow, reject or modify their advice in accordance with his own estimate of the requirements of good government;
- (b) by providing in terms in the Constitution Act that the Governor-General is entitled to dissent from the advice of his Ministers in certain specified matters;
- (c) by declaring that apart from his responsibilities for the reserved departments, the Governor-General has a "special responsibility" for securing certain specified purposes, and providing either in the Act or in the Instrument of Instructions that the Governor-General is to be guided by his Ministers' advice unless so to be guided would in his judgment be inconsistent with his special responsibility as specified, in which case he is to act

5.

notwithstanding Ministers' advice in such manner as he judges right and expedient for the good government of the Federation.

Which of these methods is to be adopted?

(5) If the method to be followed is that indicated in 4(c) above, in what respects is the Governor-General to be declared to have a special responsibility?

(6) Apart from the control of the reserved departments which is to be a function of the Governor-General on his own responsibility upon which Ministers will not be entitled to tender advice there appear to be certain other powers which the Constitution would naturally confer upon the Governor-General, but which he will have to exercise "at his discretion" - i.e. not as the result of ministerial advice.

Is it agreed that under this category would fall such matters as

- (a) Dissolution, summoning and proroguing of Legislature;
- (b) Powers indicated under (8) and (9)(a) and (11) below;
- (c) Assenting to, or withholding assent from, legislation;
- ✓ (d) The grant of previous sanction to certain classes of legislation ((10) below);
- ✓ (e) Power to summon a joint session forthwith in cases of emergency;

- (f) Power to make rules of legislative business insofar as these are required to provide for his own powers and responsibilities.

Governor-General's special powers in relation to Legislature.

(7) Is it accepted as following upon the imposition on the Governor-General of personal responsibilities of the classes indicated above in (3) and (5) that he must be given power to implement those responsibilities not merely vis-a-vis his Ministers in relation to executive decisions, but also vis-a-vis the Legislature, insofar as the fulfilment of those responsibilities involves either legislative action or the grant of Supply?

Note. It is suggested that discussions of the points connected with the grant of supply in this head and the next would be most conveniently postponed until Financial Safeguards are discussed.

(8) If so, what is to be the power of the Governor-General to counteract an adverse vote of the Legislature? Is the provision now to be made to be analogous to that now appearing in s.67B of the Government of India Act in respect of legislation, and to that in s.67A(7) in respect of Supply?

(9) (a) Is the Governor-General to retain the power of making Ordinances in emergencies for the fulfilment of his special responsibilities as indicated in (5) above

and of his personal responsibilities for the reserved Departments?

(b) Is such a power to be conferred under the new Constitution on the Governor-General acting on his Ministers' advice in cases of emergency where the Legislature is not in session, subject to confirmation by the Legislature?

(c) Will the division of legislative powers now contemplated involve the necessity of conferring on the Governors also Ordinance-making powers for the purpose indicated in (a) and/or (b)?

(10) Is the freedom of the Legislature to initiate legislation to be subject in any respects to the previous sanction of the Governor-General e.g. in matters affecting his reserved departments or affecting religion or religious rites, or affecting enactments made under his special legislative powers?

(11) Is the Governor-General to retain powers analogous to those at present conferred upon him by s.67(2A) of the Government of India Act?

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Copy No. 137

.T.5.

INDIAN ROUND TABLE CONFERENCE 1932.

(November - December).

The attached points for discussion are circulated by the Lord Chancellor in order to assist the Conference in considering Head E of the Provisional Agenda.

(Sd) R.H.A. CARTER.

Secretariat-General,
House of Lords, S.W.1.
30th November, 1932.

HEADS FOR DISCUSSION

E. "DEFENCE (FINANCE AND CONNECTED QUESTIONS)".

I. GENERAL.

The questions below are framed on the assumption that Defence is a Governor-General's subject but that the future Legislature should have the same opportunities of discussion in the sphere of Defence as the present.

II. FINANCE.

(1) What arrangements should be adopted to enable the Governor-General to obtain supply for Defence purposes without placing limitations upon his responsibility for the subject?

(2) Is it agreed that, since the Army Department will no longer be a civil Department of the Government of India as such, its charges cannot appropriately be dealt with otherwise than under the head of Defence expenditure?

III. RELATIONS WITH THE PROVINCES ETC.

(3) Is it desirable to make some special provision for dealing with the cost of employing troops in aid of the Civil Power in so far as it is already charged to Central revenues, as, for instance, by arranging that any such cost which might thus become debitable to Defence expenditure should not have to be found within the normal Army Budget but should be admitted as an extraordinary charge outside that Budget?

(4) Is it agreed that the powers of the Governor-General vis-a-vis the Provinces should be made clear in so far as their co-operation may be required to assist him in discharging his responsibilities for

Defence/

Defence; for instance in the location of troops
wherever he may consider necessary and the retention
or the acquisition on terms of land in provincial
areas which is required for Defence purposes.

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Copy No. 36

R.T.6.

INDIAN ROUND TABLE CONFERENCE 1932.

(November - December).

The attached points for discussion are circulated by the Lord Chancellor in order to assist the Conference in considering Head F of the Provisional Agenda.

(sd) R.H.A. CARTER.

Secretary-General.

Secretariat-General,
House of Lords, S.W.1.

2nd December, 1932.

Heads for Discussion on Subject F.

FEDERAL FINANCE.

Reports of the Federal Finance Committee and the Indian States Enquiry Committee (Financial).

Introductory
Note.

From the point of view of British India the main feature of the plan proposed by the Committee which sat last year under the Chairmanship of Lord Peel was the transfer to the Provinces of income-tax receipts, with certain exceptions, the resulting gap in the federal budget being made good by fixed contributions from the Provinces, these contributions being extinguished in a stated period. Objection has been taken to this plan that it might endanger the financial stability of the Federation and that it fails to provide the Federal Government with sufficiently elastic heads of revenue. If income-tax were to be transferred the Federal Government would be mainly dependent upon customs receipts, and if the protective policy to which India is committed led to any great development of Indian industries the customs revenue would fall. It is true that income-tax receipts would increase, but the Provinces would be the chief gainers. Further, if the conclusion reached by Lord Eustace Percy's Committee be accepted that a time-table cannot be laid down for the reduction and ultimate extinction of provincial contributions, it cannot be doubted that the Federal Government would be under constant pressure to reduce them and the danger would always exist that the Federal Government might, if times were good, yield to this pressure and reduce or extinguish the contributions prematurely.

PART I.A. Relations of Federal and Provincial
Finance.

1. Is it considered that the transfer of the proceeds of taxes on income offset by provincial contributions, as recommended by the Peel Committee, cannot be accepted in view of:

- (a) the present economic and financial position which renders improbable the realisation of the Percy forecasts in the near future and which indeed is such that no portion of an existing source of central revenue can at present safely be permanently alienated;
- (b) the essential need to ensure the stability of federal finances and to provide some measure of elasticity in federal revenues in view of the danger that customs receipts may diminish if the protective policy now followed be successful;
- (c) the finding of the Percy Committee that the proposed provincial contributions could not in any case be limited in duration;
- (d) the general objections to a system of provincial contributions?

2. Is it agreed that, in view of the above facts, special measures will be required at the outset to provide

that/

all Provinces will start with equilibrium, and if so, would the most suitable method to use be the grant of subventions from the Federal Government to deficit Provinces?

3. Should such subventions be permanent, or should they be open to review after a stated period, or should they be absorbed in subsequent distributions of revenue to the Provinces?

(The initial determination of the amounts of such subventions would have to take place before the new constitution comes into operation.)

- 4.(a) Assuming the adoption of such an initial plan, is it agreed that a permanent scheme should be established under which the Provinces shall receive a share in the taxes on income?
- (b) Should a power of surcharge for each Province be given, and if so, within what limits?
- (c) Is it to be provided (whether by way of alternative to (b) or in addition to (b)):- (i) that some portion of the proceeds of federally raised taxes on income shall be distributed to the Provinces when financial conditions permit, or (ii) should the distribution take the form of conferring power on the Provinces conjointly to require the Centre to impose, within limits, taxes on income for their benefit?
- (d) In the event of either (c) (i) or (c) (ii) being adopted, what should be the basis of distribution between the Provinces?
- (e) As regards the stages by which some share in the taxes on income will be surrendered to the Provinces, is it agreed

that, in order to obtain an impartial and independent decision on these matters, the most satisfactory arrangement would be that the final decision should rest with the Governor-General as a special responsibility?

B. Other Revenue Questions.

5. Are the proposals of the Percy Committee under the head "Powers of Taxation" (Chapter 6) generally acceptable?

6. Is it agreed that the Federal Legislature must legislate in regard to "Class III" taxes, i.e. "Taxes leviable for the benefit of the units subject to a right of federal surcharge."?

7. Is it agreed that residuary powers of taxation should vest in the Units subject to the condition that the levy of a tax shall not directly prejudice a federal source of revenue

C. Debt and Emergencies.

8. Are the proposals of the Percy Committee under the head of "Borrowing Powers" (Chapter 7, section iii) generally acceptable?

9. Is it agreed that the security for future federal loans shall be the revenues of the Federal Government only?

(The security for pre-federation loans would remain as before.)

10. Is it desirable that the levy of emergency contributions from all Units of the Federation should be provided for and, if so, should the occasion of their imposition be restricted to war or given the more extensive definition proposed by the Percy Committee in paragraph 112 of their Report, and what should

FINANCIAL ARRANGEMENTS WITH THE STATES.

(References below are to paragraphs of the Report of the Indian States Enquiry Committee (Financial) where not otherwise stated).

1. On the assumption that the ideal system of federal finance would be one under which all Federal Units would contribute on a uniform basis to the federal resources, is it agreed that the terms of entry of the States into Federation should, as far as possible, entail the gradual elimination of contributions of a special character (Cash Contributions, Ceded Territories) by certain States to the resources of the Federal Government, and the disappearance of the immunities of certain States from certain heads of federal taxation (Sea Customs, Salt, Posts and Telegraphs)? (Report of Pool Committee 1931, paragraphs 17 - 20)
2. On the above assumption, is it agreed that the financial adjustment with the States will entail separate agreements with a number of States on their entry into Federation? (Paragraph 442).
3. Should such separate settlements be made by means of a balance sheet for the States affected, setting off credits (in respect of cash contributions and the value of ceded territories) against the value of any privilege or immunity enjoyed by States in the manner recommended in paragraphs 443 and 444 of the Report of the Indian States Enquiry Committee?
4. Is it agreed that the present Cash Contributions (Tribute) of unequal incidence contravene the fundamental principle that contributions to federal resources should be on a uniform basis (paragraph 64) and that there is no permanent place for them in the federal system?

If so, should a moiety of these Cash Contributions, generally speaking, be extinguished at the latest in 10 years from federation and the whole within 20 years? (Paragraph 90).

5. Assuming that Tributes and Cessions of Territory have for the most part a common origin (paragraph 95) and that States which in the past have ceded territory in return for protection are equally entitled to some form of relief, is it accepted that the method of calculating the relief proposed for these States, viz., the net value of the territory ceded at the date of cession (paragraph 105), is the right one?

6. On the assumption that the entry of each State into the Federation should as far as possible result in its assuming an equitable portion of federal expenditure, is it to be admitted that a State enjoying privileges or immunities in the field of federal taxation which are not offset by its special contributions should retain the balance in its favour in respect of its privileges or immunities in whole or in part on its entry into the Federation? (paragraph 442).

7. In the case of Salt, taking the terms "privilege" and "immunity" to mean "the extent of the exemption enjoyed by a State (though not necessarily its inhabitants) through the operation of its Treaties or Commercial Agreements from the contribution to the Central revenues which is made through the incidence of the tax by the Provinces of British India and by other States" (paragraph 219), is it agreed that there would be advantage in the removal (as suggested in paragraphs 230 - 232 of the Indian States Enquiry Committee's Report) of all existing restrictions upon the marketing of salt manufactured in Kathiawar in order that these Units may be able to make a contribution to the efficient and economic supply of salt to India as a whole?

6.
E. In regard to Sea Customs, on the assumption that the possession of an immunity by certain States which prevents other States from making their full contributions to the Federation is contrary to federal principles, is it agreed that maritime States should at the most not retain in their own hands more than the value of the duties on goods imported through their ports for consumption by their own subjects, as recommended in paragraph 382 of the Indian States Enquiry Committee's Report?

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INDIAN ROUND TABLE CONFERENCE, 1932.
(November - December)

The Report of the sub-Committee on the Distribution of Legislative Powers is circulated herewith to the Conference. The Report will be presented to the Conference for discussion at the meeting on Tuesday, 13th December.

(Sd.) R.H.A. CARTER

Secretary-General,
House of Lords,
S. W. 1.

December 1932.

INDIAN ROUND TABLE CONFERENCE, 1932
(November - December)

R E P O R T

of
Sub-Committee on the Distribution of Legislative
Powers.

The sub-Committee found it convenient to deal first with the second head of their Terms of Reference and accordingly addressed themselves at the outset to an examination of the definition of the subjects provisionally allocated between the Centre and the Provinces by the Appendices to the Second Report of the Federal Structure Committee and to the further proposals made in the same connection by the Consultative Committee. Their deliberations on this matter satisfied them that the statutory delimitation of the sphere of competence of the Federal and Provincial Legislatures which the conceptions of provincial autonomy and federation inevitably involve will necessitate, whatever method of delimitation and allocation is adopted, a much more careful and scientific definition of each subject than was required for the purposes of the Schedules to the existing Devolution Rules upon which the Federal Structure Committee's lists were based. They are further satisfied that neither the sub-Committee nor the Conference are competent to undertake this in the time at their disposal. The sub-Committee hope, therefore,

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that His Majesty's Government will lose no time in beginning with expert assistance this laborious but important task.

2. In the course of their examination of this matter it was brought to the notice of the sub-Committee by representatives of the States that in respect of some at all events of the subjects which had been classified by the Federal Structure Committee as "federal for policy and legislation" the States had not at the time intended to agree to the possession by the Federal Legislature of plenary powers of legislation in the States: in other words they intend to cede to the Crown in respect of each of these subjects a field of legislative jurisdiction to be specified in the Act or Treaty and to retain the remainder themselves. The sub-Committee are not in possession of full details, but, as an example, they observe that, in the case of the Federal subject of railways, the exponents of this view suggested that so far as its operation in the States is concerned, the scope of Federal legislation might have to be confined to matters connected with safety, maximum and minimum rates and the interchangeability of traffic, that outside this limited range, the individual States'

Governments/

Governments should have independent and exclusive jurisdiction and that for securing compliance with its desires in railway matters not covered by the above heads the Federal Government should rely upon negotiation and agreement. Acceptance of this arrangement appears to involve, as a necessary consequence, variations of competence in relation to the States and the Provinces respectively, of the Federal Legislature.

3. Turning to the first Head of their Terms of Reference, the sub-Committee endeavoured to assess in the light that had been thrown upon it by their detailed examination of subjects, the general requirements of a workable general plan of distribution of powers. They suggest to the Conference that any such plan must necessarily involve, as the first desideratum, a carefully drawn list of subjects upon which the Federal Legislature is to possess exclusive legislative powers. Two alternative methods present themselves of distinguishing between those of the 'exclusive' subjects which are to be Federal and those which are to be British Indian. The first method would be so to classify them in the Act itself (or in a Schedule attached to the Act) as to make a statutory distinction between Federal and British Indian subjects. The second method would be to enumerate them all in the Act as matters on which the Federal Legislature has exclusive jurisdiction

4.

jurisdiction, leaving it to the States in their acceding Instruments to specify those of them which, in the States, are to be outside the range of Federal competence. The sub-Committee recommend the adoption of the second alternative, but they agree with the view of States' representatives that even so it would be advantageous that the list should be divided in two parts, of which Part I would include only those subjects in respect of which, generally speaking, the States may be expected to cede the necessary jurisdiction for the purpose of constituting them Federal subjects. Such a sub-division would greatly facilitate the drafting of the States' Instruments of Accession. The second alternative would also have the advantage that it would afford an easy means, either to the States generally, or to individual States in course of time, if they should so desire, to accept as operative in the States legislation upon subjects which by their original Treaty had been excepted.

4. The field of exclusive jurisdiction to be assigned to the Provinces would or would not require detailed definition by a similar schedule of subjects, according as it is decided that "residual powers" are to be assigned to the Centre or to the Provinces. In the latter event there would be no need to enumerate the Provincial subjects; they could be defined as all matters other than those assigned to the Centre. The advantages which would follow from the existence of only one list are very great, and the Committee do not disguise from themselves the risks which must attend

the/

the existence of two lists each within the exclusive competence of a particular legislature and neither containing "residuary powers". A law passed by one legislature must then fulfil two conditions before it is valid: not only must its subject-matter fall within the competence of that legislature, but every part of the law must also be demonstrably excluded from the competence of the other. The risk of litigation on questions of ultra vires must in that case be greatly increased. But since there was disagreement as to the allocation of "residual powers" exclusively to the Centre or to the Provinces, the sub-Committee assume, for the purpose of this report, the existence of an exclusively Provincial list.

5. The sub-Committee are satisfied that it is not humanly possible so to define and separate all subjects of potential legislation as to secure that every conceivable subject will fall within the exclusive jurisdiction of either the Centre or of the Provinces. Moreover, even if this were possible, the allocation of every subject to the exclusive jurisdiction of either Centre or Provinces would seem to involve the loss of uniformity in directions where uniformity is desirable, or else an undue curtailment of flexibility and of Provincial initiative, - or, more probably a combination of both disadvantages. The sub-Committee therefore consider that practical requirements will in any event necessitate a field in which both Centre and Provinces should have legislative jurisdiction. The sub-Committee consider that the problem could be dealt with with sufficient precision by constituting

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.

6. The existence of concurrent powers will necessitate provisions for resolving a conflict of laws in any Province to which a Central Act regulating a "concurrent" subject is in force alongside a Provincial Act which is repugnant to it. The sub-Committee suggest that the general rule in this matter must necessarily be that in that case the Central Act will prevail. But such a rule, if unqualified, would obviously tend in theory at all events to enable the Centre in course of time to usurp the whole concurrent field. The Committee therefore suggest that if a Provincial Act relating to any matter in the concurrent field is reserved for, and receives, the Governor-General's assent, it shall prevail in the Province over any Central Act to which it is repugnant. This rule itself will, however, require some qualification; otherwise it might operate to enable the Governor-General permanently to curtail the concurrent jurisdiction of the Federal Legislature. It should therefore be provided that the validity of a Provincial Act in the circumstances indicated shall be without prejudice to the power of the Federal Legislature to legislate subsequently in a contrary sense, but that the exercise of this power shall be subject to the previous assent of the Governor-General.

7. As regards the allocation of "residual powers" - i.e. the right to legislate on matters not included in any of the three lists - the sub-Committee would hope that if the lists are drawn in sufficient detail, the undefined or unforeseen residue will not prove to be extensive. But such cases will inevitably arise and suitable provision must be made to meet them.

It was suggested that provision might be made whereby the Governor-General would be given power to decide in any given case which was the appropriate forum for legislation on an unallocated subject and whether a measure relating to that subject should be introduced in the Federal or Provincial Legislature. This suggestion found favour with some members of the Committee, as a compromise between the divided opinions on the ultimate allocation exclusively to Centre or Provinces of residuary powers, but was not acceptable to others. In these circumstances the Committee regret that they are unable to make any definite recommendation on this subject.

8. The attention of the Committee was drawn to the desirability of including in the Act some provision enabling the Federal Legislature at the request and with the consent of two or more Provinces to enact for those Provinces alone legislation which would not otherwise be within its competence. The sub-Committee agree that provision should be made for this purpose, provided that the position of the Provinces is safeguarded by ensuring that such legislation should not result in withdrawing permanently any subject from the

legislative/

legislative competence of the provincial legislatures, and that the Federal Law keeps strictly within the authority conferred on the Federal Legislature by the terms of the request.

9. The sub-Committee wish to add that it will, in their opinion, be necessary also to deal with the competence of the Federal and Provincial legislatures respectively to repeal or amend existing legislation. In the time at their disposal they have not been able to suggest a suitable machinery for this purpose, but the matter is one of great practical importance and they commend it for examination by His Majesty's Government.

8th December, 1932.

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INDIAN ROUND TABLE CONFERENCE 1932
(November - December)

The Report of the sub-Committee on the Education of the Anglo-Indian and the Domiciled European Community in India is circulated herewith to the Conference.

(Sd.) R.H.A. CARTER

Chief-General,
House of Lords, S.W.1.

November 1932.

REPORT OF SUB-COMMITTEE ON THE EDUCATION OF THE
ANGLO-INDIAN AND THE DOMICILED EUROPEAN
COMMUNITY IN INDIA.

1. The following delegates were selected to serve on the Sub-Committee:-

Lord Irwin
Mr. Jayakar
Sir L. Iqbal
Sir H. Carr
Sir H. Gidney.

2. The Sub-Committee had the advantage of consultation with Sir Henry Richards, Senior Chief Inspector of the Board of Education, in regard to the system of inspection in England.

3. The main problem which the Sub-Committee had to consider was whether European education, which is at present a provincial reserved subject, should be a provincial subject under the new constitution, or should become a responsibility of the Central Government. As long ago as 1913 the domiciled European and Anglo-Indian Community asked that European education should be placed under the Central Government. In 1923, and again in 1925, deputations from the community were received by the Secretary of State for India and made the same request. More recently the Committee on Education presided over by Sir P. Hartog considered the matter and reported to the Statutory Commission against centralisation. The Sub-Committee had, therefore, to consider a problem which had been before Government in India and the Secretary of State for nearly 30 years.

4. It is perhaps, therefore, hardly a matter for surprise that two opposing opinions found strong expression on the Sub-Committee. In these circumstances the Sub-Committee sought for a middle course and they believe they have found it in the following proposals, which they accordingly submit

The Sub-Committee recognise the special needs and circumstances of the Anglo-Indian Community and the necessity of maintaining a proper and adequate standard of their education. They have, however, decided that it is not necessary on this account that Anglo-Indian education should be a central responsibility, but they recommend that the education of Anglo-Indians and domiciled Europeans should have special protection accorded to it in the several Provinces, and that means should be found to secure its better co-ordination. To this end they recommend that

(a) it should be provided by statute that there shall be no reduction in existing educational grants-in-aid for the community in any Province other than a reduction pro rata with a reduction in the general educational grants-in-aid, save with the consent of a majority of three-fourths of the Legislature concerned; and further that this special protection shall continue until such time as it may be decided otherwise by a majority of three-fourths of the Legislature. These provisions should be without prejudice to the special powers of the Governor for the protection of Minorities;

(b) each Province should forthwith and before the new Constitution comes into force create a Board for Anglo-Indian Education, consisting of the Education and Finance Ministers of Provinces, one representative from each of the Universities in the Province, one representative of the Managers of Anglo-Indian Schools and two Anglo-Indians, the Boards being nominated by the Governors in consultation with the Ministers of Education after taking into consideration any recommendations put forward by the interests concerned. The Boards' duties would be to make representations

that they might consider necessary for the discharge of their duties, to administer the grants when made, and to tender advice to the Ministers on matters of administration concerning Anglo-Indian Educational ^{institutions.} ~~schools and training colleges.~~

(c) in order to secure uniformity of educational standards, and co-ordination of Anglo-Indian education, throughout India an Inter-Provincial Board for Anglo-Indian Education should be established forthwith, consisting of the Provincial Ministers of Education or their deputies and an equal number of persons nominated by Provincial Governors to represent Anglo-Indian schools, in consultation with the Ministers of Education and the community concerned. The Chairman should be elected by the Board from their own number.

(d) the Inspectorate of Anglo-Indian Schools should be appointed by the Inter-Provincial Board and placed under the general direction of the Board, for the purpose of securing uniformity of educational standard, and inspection. The Inspectorate should work under a Chief Inspector and have jurisdiction in such areas as the Board may decide, after consultation with the Provincial Boards concerned. In respect of the administration of schools situated within a Province, the Inspectorate would work under the specific control of the Provincial Minister of Education, acting in consultation with the Provincial Board of Education.

(e)/

(e) the cost of the Inter-Provincial Board and of the Inspectorate should be borne by the Provinces in proportions to be decided by that Board, or, failing agreement, by arbitration.

5. In making the recommendations in sub-paragraphs (b) to (e) of paragraph 4, the Sub-Committee assume that the maintenance of this or some equivalent machinery for the purpose of giving effect to the recommendation in sub-paragraph (a) of paragraph 4 should be rightly held to fall within the scope of the special responsibilities of Governors for the protection of Minorities.

Signed, on behalf of the sub-Committee

IRWIN.

December 1932.

CONFIDENTIAL.

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INDIAN ROUND TABLE CONFERENCE 1932.
(November - December).

The attached points for discussion are circulated by the Lord Chancellor to assist the Conference in considering Heads G and H of the Provisional Agenda.

(Sd.) R.H.A. CARTER

Secretary-General.

Secretary-General,
House of Lords,
S.W.1.

4th December 1932.

HEADS FOR DISCUSSION.

G. Fundamental Rights.

H. "Constituent Powers" and powers of Indian Legislatures vis-à-vis Parliament.

INTRODUCTORY.

1. The general problems before the Conference under these Heads for Discussion (which, for convenience, have been taken together) may be described as follows:-

- (a) the nature and extent of the limitations to be imposed by the Constitution on the general competence of the legislatures, Federal and Provincial;
- (b) the nature and extent of the special limitations (if any) to be imposed by the Constitution on the general competence of Indian Legislatures as settled under (a), in order to safeguard the interests of the population in general, or of sections of the population ("fundamental rights"); and
- (c) the extent to which the provisions of the Constitution Act itself are to be made subject to alteration by Indian legislation, and the nature of the special provisions to ensure that such legislation is in accord with the desires of the several interests affected.

2. The expression "Constituent Powers" in the Heads for Discussion is intended to indicate the last named of the above three categories. It will probably be convenient, therefore, to consider the problem of Constituent Powers separately from, and after the problem of the general and special limitations to be placed on the competence of the Legislatures, Federal and Provincial.

I. Limitations on the general competence of Indian Legislatures.

Taking first, therefore, the problem set out in the first paragraph above, it will be convenient to specify, in detail, the limitations imposed by the present Act upon the general competence of the Indian and Provincial Legislatures. They are as follows, and are to be found in s.65(2) and (3), s.80A(4), s.84(1) and s.131(2) of the Government of India Act:-

A. In relation to the Indian Legislature.

- (i) The Indian Legislature cannot by its own laws, unless expressly so authorised by Act of Parliament, repeal or affect any Act of Parliament passed after 1861 which applies to India, or any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom (s.65(2))

- (ii) The Act provides that a law made by any Authority in British India, and repugnant to any provision of the Government of India Act, or of any other Act of Parliament, shall, to the extent of that repugnancy, but not otherwise, be void (s.84(1)).
- (iii) The Indian Legislature cannot make any law affecting the authority of Parliament, or any part of the unwritten laws or Constitution of the United Kingdom, whereon may depend in any degree the allegiance of any person to the Crown, or affecting the sovereignty or dominion of the Crown over any part of British India (s.65(2)).
- (iv) The Indian Legislature cannot, without the approval of the Secretary of State in Council, abolish any High Court, or empower any Court, other than a High Court, to sentence to death any of His Majesty's subjects born in Europe, or the children of any such subjects (s.65(3)).
- (v) The Act expressly saves the power of Parliament to control the proceedings of the Governor-General in Council and to repeal or alter legislation made by any authority

for British India and the inhabitants thereof (s. 131 (2)).

B. In relation to the Provincial Legislatures.

- (i) The limitations applying to the Indian Legislature specified under heads (ii) and (v) above, apply also to Provincial Legislatures.
- (ii) No provincial legislature can make laws which affect any Act of Parliament (s. 80A (4)).

(1) Would it suffice and be appropriate if the Constitution contains provisions on the following lines (analogous in plan to those agreed in connexion with the distribution of legislative powers between the Federal and Provincial Legislatures):-

- (a) that any Act of the Federal Legislature a Provincial which is repugnant to an Act of Parliament shall, to the extent of the repugnancy, be void; but
- (b) that any such Act which had been submitted for, and received, the sanction of the Governor-General to its introduction, and has received his subsequent assent (having, in the case of a Provincial Act, been reserved for that purpose) shall be intra vires and valid, notwithstanding its repugnance to an Act of Parliament; but
- (c) that the grant by the Governor-General

of his previous sanction to the introduction of a Bill under these provisions shall be without prejudice to the exercise of his power to withhold his assent from the measure when passed, or, alternatively, to reserve it for the signification of His Majesty's pleasure?

Note. The foregoing suggestions are based on two assumptions:-

(a) that legislation touching certain matters will not fall within the competence of any Indian Legislature, namely, legislation affecting

(i) the Sovereign or the Royal Family and the sovereignty or dominion of the Crown over any part of British India; and

(ii) the Army Act, the Air Force Act and the Naval Discipline Act.

It may, further, be found desirable to make special provisions relating to laws affecting British nationality; and

(b) that the Constitution Act itself will be treated as falling outside the provisions relating

(2) Is there any need to retain under the new Constitution the limitations specified under A(iv) above?

II. Special Limitations.

(3) Is it agreed that the propositions formulated by the Consultative Committee for enactment as "Fundamental Rights" would, if they were, in fact, to be enacted, necessarily be framed as limitations on the powers of the Legislature, violation of which by any Indian Act would render that Act ultra vires and void?

(4) If the answer to (3) is in the affirmative, which of the propositions in the appended list are to be adopted as limitations on the powers of the Legislatures?

* (a) All citizens are equal before the law.

(b) Women shall have equal civic rights and duties with men to the extent Nature allows.

Note. - This clause should, it is suggested, be so drafted as not to affect proprio vigore existing personal laws.

(c) No citizen shall be deprived of his liberty, nor shall his dwelling be entered, save in accordance with law.

(d) Every citizen shall have the right to a writ of Habeas Corpus.

v (e) Every citizen shall have the right to keep and bear arms in accordance with regulations made in this behalf, provided that such regulations shall not discriminate by reason only of religion, place of birth, descent, caste, colour or any of them.

(f) The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions for all purposes including the safeguarding of labour and economic conditions, is hereby guaranteed, provided such purposes are not opposed to public order or morality.

Note. - This clause should, it is suggested, be so drafted as to safeguard the right of the Sikhs (and other communities under a similar religious obligation) to carry the kirpan or sword or dagger as a religious symbol.

(g)/

- (g) Freedom of conscience and the free profession, practice and propagation of religion are, subject to public order and morality, guaranteed to every citizen.

No person shall by reason only of a change of religion be subjected to any punishment or forfeit any civic right, or suffer any loss or prejudice or disability in respect of rights of property or inheritance.

Note. - This clause should, it is suggested be so drafted as fully to cover Act XXI of 1850.

- (h) All religions shall be equal before the Law and there shall be no state religion for the Federation nor for any unit of the Federation.
- (i) No person having the status of citizen in any one Unit of the Federation shall be subjected to any disability or discrimination in regard to taxation, the holding of property the carrying on of any profession, trade, or business, or in respect of residence or travel in another Unit of the Federation if with the status of citizen in that other Unit, he would not have been subject to such disability or discrimination; provided that if one or both the Units in question are States this clause shall operate only if it has been extended to the Unit or Units concerned in the terms of para. 3 of this Note.

(i)/

(j) No citizen shall, by reason only of his religion, place of birth, descent, caste, colour or any of them be prejudiced in regard to use of or access to any public amenities or places of public resort such as public ways, public wells, springs and bathing ghats, public means of transport, public places of recreation, and the like.

Note.- This clause should, it is suggested, be so drafted as to cover all the matters included under Fundamental Right A (1) under Appendix II to the First Report of the Minorities Committee - page 168 of Vol.III of Sub-Committee No. 3 Minorities Report.

(k) No citizen shall, by reason only of religion, descent, caste, colour or any of them be disabled from practising any profession, trade or calling or from acquiring or transferring property.

Note. - This clause should, it is suggested, be so drafted as not to affect the personal laws of the various communities nor fetter the legislature's powers in regard to measures such as the Punjab Land Alienation Act.

(l) No citizen shall, by reason only of his religion, place of birth, descent, caste, colour or any of them be disabled from holding any public office whether it be office of power or honour or otherwise.

Note. /

Note.- This clause should, it is suggested, be so drafted as not to conflict with their recommendation in section 5 (2) of the Report of the Services Committee regarding "a fair and adequate representation to the various communities consistently with considerations of efficiency and the possession of necessary qualifications," and to carry out the object of section 5 (5) ibid.

(m) With due regard to the right of all classes to cultural advancement no citizen shall by reason only of his religion, place of birth, descent, caste, colour or any of them be denied education in any institution maintained or aided by the State.

Note.- This clause should, it is suggested, be so drafted as to safeguard the right of the depressed and other classes to special treatment, as also to preserve the autonomy of institutions in the matter of fixing the admission percentages for particular classes and the like.

(n) Minorities based on religion or language or descent shall be entitled to receive primary instruction in their mother tongue under conditions to be prescribed by law. For the purpose of this clause the minorities and their respective languages shall be determined for each province by rules under the Constitution Act.

Note.- In suggesting this clause it is the intention that the Anglo-Indians all over India and the Sikhs in the Punjab should be thus provided for.

(o)/

- (o) Citizens belonging to any community whether based on religion, or language, or descent, have, subject to public order or morality, equal rights with other citizens in forming, controlling and administering at their own expense, educational, cultural, social, philanthropic, and religious institutions, with the practice of their religion and the free use of their language therein.

Note.- It is suggested that there should be an explanation under this clause specifically providing that Anglo-Indians are for the purpose of this clause, deemed a community based on descent.

- (p) The educational, cultural, social and philanthropic institutions of the various classes and communities shall be ensured a fair share in the grants-in-aid given by the State and by self-governing bodies for such institutions.
- (q) All titles to private property are guaranteed. No citizen shall be expropriated save in the public interest and by due process of law, and, except where there has been forfeiture as penalty or punishment for a delinquency, only on payment of fair compensation.

III. CONSTITUENT POWERS.

(5) Should the Constitution now to be enacted contain provisions giving each provincial legislature (subject to conditions as to the ratification of measures promoted in exercise of these powers - as to which see Head (6)).

✓ (a) power to alter the franchise for the provincial legislature, and, if so, what range of power?

(b) power to alter the size and composition of the provincial legislature, (including alteration of the proportions inter se of the seats allotted to various communities or interests, the provision of seats for new interests, or the abolition of seats allotted to particular interests and the abolition of communal representation) - and, if so, what range of power?

(6) If the answer to Head (5) or any part of it is an affirmative answer, is the power to pass legislation having effects such as those indicated to differ in any respect from the power to pass any other Act; if so, in what respects?

[It is suggested that the applicability of any or all of the following possible qualifications upon the ordinary rule that an Act requires the assent of a bare majority of the members present and voting for its passage should be considered:-

(a)/

- (a) Referendum to the electorate;
- (b) The occurrence of a general election in which the policy of the proposed measure had been made an issue;
- (c) Affirmation of the Bill by a prescribed majority (e.g. two-thirds, or three-fourths) of the members present and voting, or, alternatively, of the full membership;
- (d) The assent, as an element in this majority vote, of a majority of the representatives of each of the several communities or interests affected;
- (e) The concurrence of the Federal Legislature;
- (f) An obligation upon the Governor to reserve the measure for the signification of His Majesty's pleasure;
- (g) the prescription of a time limit before the expiry of which the power granted shall not be exercisable.]

Note. It is assumed for the purpose of the following Heads that it cannot be placed within the power of the Federal Legislature to alter provisions of the Constitution which affect the States, other wise than within the limits of their Treaties.

(7) Should the Constitution now to be enacted contain provisions giving the Federal Legislature (subject to conditions as to the ratification of measures promoted in exercise of such powers, as to which see Head (8))

(a)/

- (a) power to alter the franchise for British India for either Chamber, either generally or in any one or more provinces, and the method of election of British Indian members for either Chamber? - and, if so, what range of powers?
- (b) power to alter the allocation inter se between the Provinces of the British Indian seats or the communal distribution of those seats? - and, if so, what range of powers?
- (c) power to alter the provisions relating to the distribution of legislative powers between the Federation and the Provinces, whether by assuming subjects allocated to the provinces, or assigning to the provinces subjects allocated to the Federation? - and, if so, what range of power?

(8) If the answer to (7) or any part of it is in the affirmative, is the power to pass legislation having effects such as those indicated to differ in any respects from the power to pass any other legislation? If so, in what respects.

[The points suggested for consideration in connection with Head (6) are mutatis mutandis relevant here also, "the concurrence of the provincial legislature" being substituted for point (e). The assent of both Chambers of the Federal Legislature given separately by whatever

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INDIAN ROUND TABLE CONFERENCE, 1932.

(November - December).

The attached Report of the Committee
on Commercial Discrimination is circulated herewith
to the Conference.

(Sd.) R.H.A.CARTER.

Secretary-General,
House of Lords,
S.W.1.

1st December, 1932.

REPORT OF COMMITTEE ON
COMMERCIAL DISCRIMINATION.

The Committee proceeded upon the basis of paragraphs 16-26 of the Federal Structure Committee's Fourth Report, which represents the general conclusions reached upon this subject, after much discussion and negotiation, at the previous sessions of the Round Table Conference.

The basic proposal of the Federal Structure Committee was that the avoidance of discrimination would best be achieved by specific provisions in the Constitution prohibiting discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply.

2. The Committee reaffirmed this proposal of the Federal Structure Committee as to the method of achieving the avoidance of discrimination. But while there was agreement that legislative discrimination should be dealt with by such provisions, some members were disposed to the view that it was undesirable to attempt to provide against discrimination

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when it resulted from administrative action, on the ground inter alia that as the powers to prevent administrative discrimination must necessarily be vested in the Governor-General and the Governors, the possession of such powers would be tantamount to conferring a right of appeal to those high officers against any action of the Ministry which had given rise to dissatisfaction on the part of any individual or minority. The general view of the Committee was, however, that no such consequence need be anticipated from the inclusion of "the prevention of commercial discrimination" in the list of the Governor-General's and Governors' "special responsibilities", and that the adoption of this expedient was the only available means of making such provision as can be made against administrative action of this nature. On the general plan already agreed by the Conference for the statutory recognition as part of the scheme of safeguards in general of "special responsibilities" for certain specified purposes, the consequence would be, in this particular instance, that the Governor-General or Governor, as the case may be, would be entitled in the last resort to differ from proposals of his Ministry if he felt that these involved unfair discrimination. The Committee anticipate that the Instrument of Instructions would make it plain that the "special responsibilities" - or rather the powers flowing from them - are not to be invoked, either in this particular instance or in any other, capriciously or without due cause.

As regards the persons and bodies to whom these provisions should apply, a distinction was at one stage of the Committee's discussions sought to be drawn between those carrying on business in and with India; for example, it was suggested that in the case of companies, protection on the lines indicated above should be confined to companies registered in India. It was however pointed out that a provision on these lines involved possible attempts at double registration by companies originally registered in the United Kingdom which would inevitably give rise to great legal confusion and conflicts of jurisdiction. The majority of the Committee were not in favour of any such distinction, but were of opinion that this aspect of the matter should be dealt with on the basis of the principle of reciprocity, i.e. that no subject of His Majesty domiciled in the United Kingdom and no company registered in the United Kingdom should be subjected to any disabilities or discrimination in respect of the matters enumerated in paragraph 1 of this Report to which subjects of His Majesty domiciled in India or companies registered in India are not subjected in the United Kingdom. Indian registered companies, on the other hand, would be secured against legislative or administrative action imposing upon them conditions as to the conduct of their business which discriminate against particular classes, through the operation of the general principles indicated in paragraph 18 of the Report of the Federal Structure Committee cited in paragraph 1 above.

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The reciprocal basis here suggested should suffice to cover all the matters specified in paragraph 1 of this Report, but pending agreement between a Medical Council in India and the General Medical Council some special provision may be required regarding the right to practice in India of practitioners registered in the United Kingdom.

The Committee assume that it would be open to the Government of India should they wish to do so, to negotiate agreements for the purposes indicated in this paragraph with any other parts of the British Empire.

4. The Committee agreed that bounties or subsidies should be available, without distinction, to all firms or individuals engaged in a particular trade or industry at the time the enactment authorising them is passed, but that in regard to companies entering the field after that date the Government should be at liberty to impose the conditions of eligibility recommended by the External Capital Committee. It would, of course, be a question of fact whether the purpose of the subsidy or the imposition of particular conditions, though not discriminatory in form was, in fact, intended to penalise particular interests; and the Governor-General or Governor, or the Courts, as the case may be, would have to form a judgment on this question in deciding whether a proposed measure was or was not discriminatory.

5. The Committee's proposals are based upon a conviction of the desirability of maintaining unimpaired under the changed conditions which will result from the new constitution that partnership between India and the United Kingdom with which the prosperity of both countries is

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bound up; and they are confident that the proceedings and policies of the future Indian Governments will be informed by a spirit of mutual trust and good will which will render it unnecessary to call into play the provisions of the Constitution to be framed on this matter.

21st December, 1932.

CONFIDENTIAL.

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P.11.

INDIAN ROUND TABLE CONFERENCE 1932.
(November - December).

The following reports have been prepared by the Secretariat for the purpose of recording in summary form the effect of the discussions in the Conference on the following Heads of the Agenda, namely those Heads which were not remitted by the Conference to Committees for consideration.

- A. REPORT OF THE INDIAN FRANCHISE COMMITTEE.
METHOD OF ELECTION TO AND SIZE OF THE TWO FEDERAL CHAMBERS.
- B. RELATIONS BETWEEN THE FEDERAL CENTRE AND THE UNITS.
(b) Administrative.
- C. SPECIAL POWERS AND RESPONSIBILITIES OF THE GOVERNOR-GENERAL AND GOVERNORS.
- E. DEFENCE.
- G. FUNDAMENTAL RIGHTS.
- H. "CONSTITUENT POWERS" AND POWERS OF INDIAN LEGISLATURES VIS-A-VIS PARLIAMENT.

These reports will be brought before the Conference at 8.30 p.m. tomorrow, Thursday, 22nd December.

The heads which were remitted to Committees (or for discussion with a limited number of delegates) are

- B. RELATIONS BETWEEN THE FEDERAL CENTRE AND THE UNITS.
(a) Legislative.

D./

D. FINANCIAL SAFEGUARDS AND COMMERCIAL SAFEGUARDS.

F. REPORTS OF THE FEDERAL FINANCE COMMITTEE AND INDIAN STATES INQUIRY COMMITTEE (FINANCIAL).

FEDERAL FINANCE.

I. FORM OF STATES' INSTRUMENTS OF ACCESSION.

and the subject of ANGLO INDIAN EDUCATION.

Reports from the Committees on the first and last of these have already been placed before the Conference. Reports on D, F and I will be placed before the Conference as soon as they are ready.

(Sd.) R.H.A. CARTER

Secretary-General.

Secretariat-General,
House of Lords,

21st December 1932.

The following report has been prepared by the Secretariat for the purpose of recording in summary form the effect of the discussions in the Conference on this head of the Agenda.

HEAD A.

THE FRANCHISE for the Provincial Legislatures and for the British Indian section of the Federal Legislature.

The Franchise Sub-Committee of the First Round Table Conference recommended the establishment of an expert body to investigate the question of the Franchise, and a Franchise Committee, under the chairmanship of the Marquess of Lothian, was subsequently appointed by His Majesty's Government and reported in June, 1932. The Report of that Committee was before the Conference in its present session.

Provincial Legislatures.

Method of Election.

The principal methods of election to the Provincial Legislatures examined in the Report of the Franchise Committee were:-

- (a) Adult suffrage;
- (b) Adult suffrage by a system of indirect voting;
- (c) Such modifications of adult suffrage as the grant of adult suffrage within certain age limits; adult suffrage for large towns; household suffrage; indirect election through local bodies;
- (d) The combination of the direct and indirect systems of franchise; and, finally,
- (e) The extension of the direct vote.

The Committee, after exhaustive

examination pronounced in favour of the acceptance of the extension of the Franchise by the direct method, and after considerable discussion, in the course of which close attention was paid to the practicability and desirability of a system based on adult suffrage and to methods of indirect election, the general sense of the Conference proved definitely to favour acceptance of the Franchise Committee's proposals.

Basis of the Provincial Franchise.

The Conference agreed with the Indian Franchise Committee that the essential basis of the franchise should be the property qualifications proposed by that Committee in their Report, subject to such modifications of detail as might prove necessary.

The Conference carefully considered the proposals of the Franchise Committee for an educational qualification. Some members were strongly in favour of its acceptance, mainly on the ground that education was a proper basis for the franchise and that unless there was an educational qualification, an important section well capable of exercising the vote would be disfranchised. Others welcomed the proposal, which they regarded as attractive; but attention was drawn first to the inadequacy of the evidence as to the numbers (possibly very small) which would be added to the electoral roll by the adoption of such a qualification and, secondly, to the serious practical difficulties involved not only in its application but in the question of the standard to be adopted. An important section of opinion was, moreover, not in favour of

the proposal. The general sense of the Conference was that further detailed examination would be required before any general educational qualification for the franchise could be adopted.

The Women's Franchise.

The Conference was unanimously in favour of accepting the proposals of the Franchise Committee that women should be enfranchised in respect of the same property qualification as that prescribed for men.

The Franchise Committee had further recommended the adoption in the case of women of a specially low educational qualification, viz. mere literacy. Some difference of opinion manifested itself on this subject. Certain members of the Conference were of opinion that "mere literacy" was too low a standard and that it would be preferable to substitute for it the upper primary standard. Attention was, however, drawn to the fact that the application of the upper primary standard would very substantially reduce the number of women likely to be enfranchised on the basis of an educational qualification and the general feeling appeared to favour the adoption of the literacy in preference to the upper primary qualification. An important section of opinion in the Conference urged, however, that if any special educational qualification were adopted at all it should be the same for women as for men.

A very general difference of opinion

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was felt as regards the proposal of the Franchise Committee that, subject to certain qualifications, the wives and widows over 21 of men qualified by property to vote for the existing provincial councils should be enfranchised. The objections taken to this proposal, which was recommended by the Franchise Committee as the only practical method of securing an adequate proportion of women on the electoral roll, were, inter alia, that it would enfranchise a large number of illiterate women; that women would as a rule vote in the same way as their husbands; and that its adoption might give rise to domestic and religious difficulties. The general opinion of the Conference was that the proposal was one which required further examination.

Considerable support was forthcoming for a suggestion that it might be possible to deal with the problem of enfranchising an adequate number of women by giving to the various Provinces some latitude to propose a method of enfranchisement of women in the light of local conditions, subject to a general injunction to aim at much the same ratio of men to women voters as had been recommended by the Franchise Committee - i.e. 1 to $4\frac{1}{2}$ a ratio which the Conference as a whole was disposed to regard as not unsuitable.

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Reference should be made in this connection to a suggestion put forward that, with a view to reducing the strain on the administrative machine, the registration of all voters qualified in respect of education, and of women enfranchised in right of their husbands, should be on application by the potential voter only.

Depressed Classes.

The Conference was of opinion that a special provision should be made to enfranchise a larger number of voters belonging to the Depressed Classes and that the standard to be aimed at should, as proposed by the Franchise Committee, be 10 per cent. of the Depressed Class population in each Province, such of the differential qualifications suggested by the Franchise Committee being adopted as might be necessary to secure this result in the light of the varying conditions in each Province.

It was agreed that the

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existing military service qualification should be maintained. One member of the Conference urged the desirability of extending the franchise to cover all members of the Territorial and Auxiliary Forces, and it was agreed that this point should be examined. A

Special representation for
Commerce in Provincial
Legislatures.

Certain Delegates urged that the recommendations of the Indian Franchise Committee in regard to special electorates for Commerce resulted in grave inequality of representation as between Indian and European Commerce in several Provinces. It was pointed out on behalf of His Majesty's Government that examination of this question inevitably involved a reopening of the Communal decision. The matter was not further discussed, but certain Indian Delegates placed on record their objection to any connection of the question of commercial representation with the communal issue.

(B)/

(B) The Federal Legislature.

Federal Assembly.

The Federal Structure Committee in para.19 of their Third Report expressed the opinion that the selection of the British Indian representatives for the Lower Chamber of the Federal Assembly should be by direct election. This recommendation was supported by the Indian Franchise Committee. Considerable discussion took place in the Conference as to the relative merits of the direct as opposed to the indirect method of election. It was pointed out on behalf of H.M.G. that if direct election was regarded as inevitable, this should not be allowed to prejudice the question of the size of the federal legislature. The general sense of the Conference, in the light of the discussion was that the balance of advantage lay with the election of the British-Indian representatives in the Lower Chamber by the direct method.

Franchise qualifications for the
British Indian electorate.

The Conference after full consideration of the various alternatives open, and in particular of a suggestion made by one member that a wage-earning qualification should be introduced, accepted generally the proposal of the Franchise Committee that the franchise for the British Indian section of the future Federal Assembly shall be the existing franchise for the provincial

of the Central Provinces; in which it should be a franchise which would bring in double the existing electorate for the provincial council.

Educational qualification.

As regards the educational qualification proposed by the Franchise Committee, opinion in the Conference generally was strongly in favour of the adoption as an educational qualification for men of the possession of the Matriculation or school-leaving certificate. An important section of opinion was, however, opposed to this proposal for the same reasons as in the case of the Provincial Legislatures.

The Conference were unable to agree as regards the adoption of an educational qualification for women voters for the Federal Assembly, the same arguments as were advanced for and against the proposal in the case of the provincial legislatures holding good, in their view, here also.

Depressed Classes.

The Franchise Committee stated that they were advised by the Census Commissioner that the addition to the qualifications prescribed for the general electorate for the new Federal Assembly of a qualification of mere literacy would result in the case of the Depressed Classes in an electorate of approximately 2 per cent. of their total population. In these circumstances they recommended the adoption of such a differential qualification.

Special Representation.

Women.

With the reservation that the communal proportions should not thereby be disturbed, the Conference as a whole accepted the proposals of the Indian Franchise Committee for the special reservation of seats for Women, to be filled by the election of one woman by each provincial legislative Council. The women's representative in the Conference was however in favour of direct election by a special women's constituency in each province.

Labour.

The proposals of the Franchise Committee for special representation of ^{Labour} by the reservation of 8 seats in the Federal Assembly were accepted by the Conference. In some quarters it was felt that the number of seats proposed was inadequate, but it was pointed out that Labour would obtain additional representation through the Depressed Class seats in the general constituencies. It was suggested that the point might be further investigated in connection with the delimitation of constituencies.

The Moslem delegation in this connection recorded their anxiety that the number of special seats should be kept at a minimum.

Commerce and Industry.

The general sense of the Conference was in favour of the acceptance of the Franchise Committee's proposal that the representation of Commerce should be concentrated in the Assembly,

and that four seats should be allocated to Indian and four to European commerce. The view was, however, expressed by some Indian delegates that those recommendations did not provide adequately for the needs of Indian commerce. They did not think that Indian commerce should be forced into the position of having to secure additional representation by seeking to influence the results of elections in the non-special constituencies, and they took exception to the connection of commercial representation with the communal question.

The representative of the European community stated that European commerce would not be satisfied with a smaller number of seats than that proposed by the Franchise Committee which represented the minimum with which they could hope to be able adequately to voice their views.

The Conference gave a sympathetic reception to a claim put forward for the retention of the seat at present filled in rotation by the Millowners Associations of Bombay and Ahmedabad, although the point was made that the grant of such special representation would make it difficult to resist claims from other industries similarly situated. Reference was also made to the importance of securing adequate representation for up-country industrial interests, and to the difficulties which might arise under the proposals of the Franchise Committee in providing for this.

Landlords. The Franchise Committee were in favour of retention of special representation for landlords, but in its existing strength, and their view on this subject was accepted by the Conference.

^ Federal Upper House.

The Federal Structure Committee of the Round Table Conference recommended that the British Indian section of the Federal Upper House in the new Constitution should be elected by the provincial legislative councils by the single transferable vote. This recommendation was supported by the Indian Franchise Committee and was accepted by the Conference, but Muslim Delegates reserved their judgment as regards the use of the single transferable vote until they knew what result the application of that system would have on the communal proportions in the whole House. Attention was also drawn to the importance of safeguarding the interests of the small minorities. If and when provincial legislatures were bicameral, detailed arrangements will obviously be required to determine the precise method of Election.

It was generally agreed that there should be no representation of special interests as such in the Upper Chamber.

Size of Central Legislature.

A marked difference of opinion manifested itself on this subject in the Conference. There was substantial

general agreement that some weightage should be accorded to the States; the proportions of seats to be filled by representatives of the Indian States previously proposed, viz. $33\frac{1}{3}$ per cent. in the Lower and 40 per cent. in the Upper Chamber still held the field, though the apprehension of the States lest by federating they would lose their individuality was mentioned as a ground for increasing their proportion in the Upper House to one of equality with British India. One of the States representatives urged that at least 125 seats in the Upper House should be allotted to the States, and $36\frac{1}{2}$ of the seats secured to them in a joint session of both houses. Provided this number of seats in the Upper House and this percentage in a joint session was secured, there would be no objection in his view to a lower percentage than $33\frac{1}{3}$ in the Lower House.

Muslim delegates were opposed to the principle of weightage for the States in the Lower House; and considered that if it was found inevitable to concede some weightage the quota of Muslim representation should be safeguarded so that the number of their seats from British India should not be less than they would have secured if the States enjoyed no weightage over population ratio.

Certain delegates urged the advantages of a large lower House on the ground of the

the consequent lessening of expense to candidates, and the increased ease with which representation could be secured for the smaller States.

It was pointed out, on the other hand, that the Federal Legislature would have limited functions, for the discharge of which so large a lower House as was recommended in the Lothian Report would not be necessary, and that in any event, whatever decision was finally reached as to the size of the two Houses, grouping of the smaller States would be inevitable. For this and other reasons - in particular the need for a counter-weight in the Upper House to democratic tendencies the alternative of an Upper Chamber limited to 60 nominated delegates of the Governments of constituent units was also put forward.

No final decision proved possible in the Conference on this question. A suggestion made on behalf of H.M.G., who intimated that general agreement on the subject between Indian delegates would carry great weight with them, that consideration should be postponed with a view to informal consultations between the Indian delegates in the hope of reaching a greater measure of agreement between the conflicting views expressed, was accepted by the Conference.

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No modification of view has been reported as having resulted from such discussions as have taken place.

1st December, 1932.

The following report has been prepared by the Secretariat or the purpose of recording in summary form the effect of the discussions in the Conference on this head of the Agenda.

1.

HEAD B(b).

ADMINISTRATIVE RELATIONS BETWEEN THE
FEDERAL GOVERNMENT AND THE UNITS.

1. It was generally agreed that the relationship between the Federal Government and the Provinces should not be so defined, in connexion with the separation of powers as to involve a necessary breach with the traditional methods and machinery of Indian administration whereby the Central Government has habitually employed as the agency for administering a large part of its functions, the ordinary provincial administrative staffs. No doubt the tendency which has shown itself of recent years, even under the existing constitution, towards employment by the Central Government of separate agencies of its own for the administration of certain of its functions will be accentuated by the departure from the unitary system: but considerations of financial and practical convenience are opposed to any immediate and necessary adoption of this system as the consequence of the statutory division of powers and functions between the Centre and the Provinces which is involved in Federation. The legal and constitutional relations between the Federation and the Provinces should therefore be so defined as to place no obstacles in the way of the devolution by the Federal Government and Legislature upon Provincial Governments or upon any specified officers of those Governments of the exercise on its behalf of any functions in relation to the administration in the provinces of any Federal or Central subject, wherever such an arrangement is found to be financially or administratively convenient.

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provincial governments in increased expenditure upon staff. It would clearly be unreasonable if every imposition of powers or duties upon provincial governments or their officers by a Federal enactment were to be regarded as necessarily involving a financial subsidy. The rule should therefore be that if the enactment of a Federal Act involves employment by the province of additional staff, the Federation should bear the cost of that staff if it is employed exclusively on the administration of a Federal or Central subject, and the cost should be shared between the Federation and that province if the additional staff is so employed only in part. In most cases, question of the proportions in which such charges are to be borne should prove capable of adjustment by mutual agreement: in case, however, of disagreement, suitable provision should be made for an arbitral decision.

3. It was generally agreed that the Constitution should endow the Federal Government with specific authority to ensure that provincial governments give due effect to Federal legislation insofar as this depends upon their own administrative agencies; it was felt in some quarters that Federal authority should extend, in the interests of the efficient performance of the functions entrusted to it, to ensuring that provincial governments so administer their own provincial subjects as not to affect prejudicially the administration of any Federal or Central subjects. As against this it was suggested in the course of discussion of this latter point that if the Federal Government is to possess this power there should be a reciprocal power in the hands of provincial Governments to

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ensure that Federal subjects are not so administered by the Federation as prejudicially to affect the administration of provincial subjects. No doubt any provincial government which considered that the action or policy of the Federal Government gave ground for legitimate complaint upon this score would lose no time in bringing its attitude to the attention of the Federal Government, either through its representatives in the Federal Legislature or by correspondence.

4. There was difference of opinion as to the extent - if at all - to which the Federation should be authorised to exercise control over the administration of provincial subjects when no question arises of reactions upon a Federal or Central subject. It was, however, generally agreed

- (a) that the scope for intervention by the Centre in the administration of provincial subjects should be strictly confined to questions involving the matters compendiously described as "law and order";
- (b) that powers of intervention for this limited purpose should be vested in the Governor-General personally and not in the Federal Government as such; in other words, that the power should be exercisable by the Governor-General "at his discretion" as explained in paragraph 10 of the Report or Head C;
- (c) that even so the Governor-General's intervention (which he would naturally exercise through the Governor) should be defined in appropriate terms as being exercisable only for the purpose of preventing the occurrence of conditions which might endanger the internal security of India.

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It was generally recognised as the basis of these conclusions that the transfer of the control of "law and order" in the provinces cannot, in the interests of the country as a whole, be treated as involving the position that every province is to be entirely independent and uncontrolled in the administration of law and order, but that at the same time the necessary powers of control and co-ordination must be so framed as, on the one hand, not to enable, or have the appearance of enabling, a constant external interference with the day to day administration of provincial affairs and, on the other hand, to be so restricted as not to be exercisable at all until a serious breakdown of law and order has actually occurred. The conclusion recorded in clause (c) above is designed to meet this two-fold purpose.

ADMINISTRATIVE RELATIONS WITH THE STATES IN FEDERAL MATTERS.

5. It was recognised that the relationship of the Federal Government with the States cannot be in all respects identical with that which will obtain with the Provinces. It was agreed that the Constitution should impose upon the States' Governments an obligation to exercise their executive power and authority, so far as they are necessary and applicable, for the purpose of securing that due effect is given within their territories to every Act of the Federal Legislature which applies to that territory. It was further agreed that the Constitution should recognise arrangements (which would, in fact, be made in suitable cases through the

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Instrument of Accession) for the administration on behalf of the Federal Government by the States of Federal subjects through the agency of staff and establishments employed and controlled by themselves, but that any such arrangements should be subject to conditions to be expressed in the Constitution enabling the Governor-General to satisfy himself by inspection, or otherwise, that an adequate standard of administration is maintained. Finally, it was agreed that power should vest in the Governor-General personally to issue general instructions to the States' Governments for the purpose of ensuring that their obligations to the Federal Government specified in this paragraph are duly fulfilled.

er, 1932.

The following report has been prepared by the Secretariat for the purpose of recording in summary form the effect of the discussions in the Conference on this head of the Agenda.

Head C.

SPECIAL POWERS AND RESPONSIBILITIES OF THE GOVERNOR-GENERAL AND GOVERNORS.

1. The Conference approached the problems presented by this head from the standpoint of the following assumptions as to the form of the constitutional structure:-

- (a) that the Act will declare that executive power and authority (as in the United Kingdom and the Dominions) vests in the Crown represented in the Federation by the Governor-General and in the Provinces by the Governors, but
- (b) that nevertheless, except in so far as is otherwise provided, (whether such provision be in the Act or in the Instrument of Instructions) the Governor-General and Governors will be guided by the advice of their respective Ministers and the Executive will depend for its legislative enactments and for its Supply upon the concurrence in its proposals of the Legislature.

2. Approached from this standpoint and from that of a unanimous acceptance of the general principles enunciated in paragraph 11 of the Second Report of the Federal Structure Committee, the questions for consideration under this head were found to resolve themselves into examination in greater detail than had been necessary or possible at previous Conferences of the exact nature and scope of the responsibilities to be imposed upon the Governor-General and Governors, and of the special powers which are to flow from these responsibilities in order that the latter may be effectively fulfilled. The detailed conclusions at which the Conference have arrived under this head of the inquiry can best be

the Governor-General's relations with his Ministers and with his Legislature respectively. The same general principle will apply to the Governors also, with the modifications of detail to be explained later.

A. Governor-General's relation with his Ministers.

3. In certain matters Ministers will not be entitled to tender advice to the Governor-General at all, and that these matters - namely, the Reserved Department will be administered by the Governor-General upon his sole responsibility. But 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. A prudent Governor-General would keep his Ministers and the advisers whom he has selected to assist him in the Reserved Departments in the closest contact; and, without blurring the line which will necessarily divide on the one hand his personal responsibility for the Reserved Departments and, on the other hand, the responsibility of Ministers to the Legislature for the matters entrusted to their charge, he would so arrange the conduct of executive business that he himself, his personal advisers in the Reserved Departments, and his responsible Ministers, are given the fullest opportunity of mutual consultation and discussion of all matters - and there will necessarily be many such - which call for co-ordination of policy. The hope was expressed that His Majesty's Government would be prepared to consider the embodiment of this principle in appropriate terms in the Governor-General's Instrument of Instructions, though it was recognised at the same time that the Instrument of Instructions must make it

clear, without ambiguity, that whatever consultation between the Governor-General and his responsible Ministers may take place upon matters arising in the Reserved Departments, the responsibility for the decisions taken is the Governor-General's and the Governor-General's alone.

Some further conclusions bearing upon this matter will be found in later paragraphs dealing with defence expenditure.

4. As regards the actual Departments to be classed as Reserved, it will be necessary to add the Ecclesiastical Department to the Departments of Defence and External Affairs in the reserved category. This agreement was based upon the understanding that an endeavour will be made to alter the existing classification of Ecclesiastical expenditure so as to bring under the head of Defence all such expenditure upon the provision of Churches and Chaplains as is required primarily for the needs of the British Army, and that the general policy will be to arrive as soon as may be at the position that the provision of such Churches and ministrations as are not required for this purpose is confined to the needs of the European members of the Services. The separate Ecclesiastical Department would thus, probably, be confined to the regulation of civilian requirements.

5. In the course of discussion it was suggested that it might be possible to define with precision the matters which were to be treated as falling within the Departments of Defence and External Affairs, and by so

certain spheres of activity which might otherwise be regarded as covered by those terms. The general trend of opinion was, however, that such a course would be undesirable in the case of Defence and unnecessary in the case of External Affairs. In the former case such an attempt would inevitably be found to involve a division of responsibility and control in a field where such division would be fatal to efficiency. This Department must, therefore, include all matters directly involving military requirements. In the case of External Affairs, while the primary ambit of the Department would be matters involving relations with foreign countries, many subjects which involve such relations, e.g. the multifarious questions which might be involved by commercial treaties, would necessarily be dealt with, and discussed, by the Ministers responsible for those subjects in the domestic sphere, by whose advice the Governor-General would be guided except in so far as he felt that his personal responsibility for the general subject of External Affairs made it incumbent upon him to act otherwise than in accordance with the advice tendered. The conclusions of the Conference upon this matter will become clearer in the light of their conclusions as explained in paragraphs 8 and 9 below; but the main point which requires emphasis in the present connexion is the fact that a matter which, in the domestic sphere, is in charge of a Minister will **not necessarily** be removed from his province and included for the time being in the Reserved portfolio of External Affairs merely by reason of the fact that the matter happens to become the subject of international negotiations.

6. A different problem presents itself in regard to the Governor-General's relations with his Ministers outside the ambit of the Reserved Departments - i.e. in the Departments which will be entrusted to the charge

In this sphere Ministers will have a constitutional right to tender advice, and normally the Governor-General will be guided by that advice. The problem is so to define the circumstances in which he will be entitled to act otherwise than in accordance with his Ministers' advice. The Conference, after examining various alternatives, were unanimous in agreeing that the most satisfactory course will be

- (a) the enactment of provision in the Constitution that the Governor-General has a "special responsibility" not for spheres of administration, but for certain clearly indicated general purposes, and that for securing these purposes he is to exercise the powers conferred upon him by the Act in accordance with directions contained in his Instrument of Instructions, and
- (b) the insertion in the Instrument of Instructions inter alia of a direction to the effect that the Governor-General is to be guided by his Ministers' advice unless so to be guided would, in his judgment, be inconsistent with a "special responsibility" imposed upon him by the Act, in which case he is to act, notwithstanding his Ministers' advice, in such manner as he judges requisite for the due fulfilment of his special responsibility.

It will be apparent from this that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitution Act.

8. It remains to indicate the matters or purposes in respect of which the Governor-General should be declared, in accordance with the proposals in the two preceding

paragraphs, to have a special responsibility in relation to the operations of the Federal Government. It was generally

on agreed that they should be the following*:-

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- (i) the prevention of grave menace to the peace or tranquillity of India or of any part thereof;
- (ii) the protection of minorities;
- (iii) the preservation of the rights of the public services
- (iv) matters affecting the administration of the Reserved Departments;
- (v) the protection of the rights of the States;
- (iv) the prevention of commercial discrimination.

It should be made clear in the first place with regard to this list that the actual wording of the items does not purport to be expressed with the precision, or in the form, which a draftsman, when the stage comes for drawing a Bill, would necessarily find appropriate; but the list expresses with sufficient clarity for present purposes the intentions underlying the conclusions of the Conference on this point. The necessity of the first three items was accepted with a unanimity which makes further elucidation unnecessary - indeed they follow as a matter of course from recommendations made at previous Conferences. With regard to (iv) it is apparent that if for example the Governor-General were to be free to follow his own judgment in relation to the conduct of Defence policy only in regard to matters falling strictly within the ambit of the department of Defence, he might find that proposals made in another department in charge of a responsible Minister are in direct conflict with the line of policy he regards as essential for purposes connected with Defence, and consequently that the fulfilment of his responsibilities for the department of Defence would be gravely impaired if he accepted the

charge of the other department in question: if, therefore, such a situation is to be avoided, it seems to be impossible to secure the object in view otherwise than by expressing the Governor-General's "special responsibility" in some such terms as those indicated in item (iv). As regards item (v), it should be explained that this is not intended to give the Governor-General any special powers vis-a-vis the States in relation to matters arising in the Federal sphere proper; the necessary powers having been transferred by the States in their treaties such matters will be regulated in accordance with the normal provisions of the Act. Nor is it intended that the inclusion of this item should be regarded as having any bearing on the direct relations between the Crown and the States. Those will be matters for which the Constitution will make no provision and which will fall to be dealt with by a Viceroy representing the Crown, who will, it may be assumed, be the Governor-General in a capacity independent of the Federal organ. 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 "Central" 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.

In such cases it seems evident that it must be open to the Crown, through the Governor-General or the Governor, as the case may be, to ensure that the particular course of action is so modified as to maintain the integrity of rights secured to the State e.g. by Treaty.

Item vi on the list follows upon the Report of the Commercial Safeguards Committee.

8A. In addition to the items specified at the beginning of the preceding paragraph, the addition was suggested of a "special responsibility" for "the maintenance of good relations with other parts of the Empire". In support of this suggestion it was urged that some power ought to vest in the Governor-General to intervene in situations where the policy advocated by his Ministers was likely to end in serious detriment to Imperial solidarity. On the other hand it was agreed that the existence of such a power in the hands of the Governor-General, with no corresponding power at the disposal of Dominion Governors-General, would tend to place India at a disadvantage in inter-Imperial affairs and would raise grave suspicions in the minds of the Indian public as to the uses to which it would be put: those who held this view pointed out that the Governor-General would in any case be in a position to refuse his assent to legislative measures which he considered likely to give rise to justifiable resentment in the Dominions, and that no additional safeguard for this purpose was either necessary or desirable.

special responsibilities having been thus indicated it is desirable to explain somewhat fully the precise effects which were contemplated as the results of the proposals contained in the three preceding paragraphs. In the first place it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers in fulfilment of a "special responsibility the responsibility of Ministers for the matters committed to their charge remains unfettered and complete. To take a concrete instance, it will clearly be the duty of Ministers, rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the Minister in charge of a department as likely to be unfair or prejudicial to a particular minority in the last resort to inform the Minister concerned,

(or possibly the Ministers as a body, if they generally support the proposals of their colleague), that he will be unable to accept the advice tendered to him. Nor is it contemplated that the Governor-General, having been vested with "special responsibilities" of the kind indicated, will either wish, or find it necessary, to be constantly overruling his Ministers' proposals. The discussions of the Conference have proceeded on the basic assumption that every endeavour will be made by those responsible for working the Constitution now under consideration to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise. In the great bulk of cases therefore in day to day administration, where questions might arise affecting the Governor-General's "special responsibilities" mutual consultation should result in agreement so that no question would arise of bringing the Governor-General's special responsibilities into play.

10. Apart from the Reserved Departments, and the specified special responsibilities of the Governor-General outside the sphere of those Departments, there is a third category of matters in which the Governor-General must be free to act on his own initiative and consequently must not be under any constitutional obligation to seek, or, having sought, to follow, ministerial advice. For this purpose certain specified powers would be conferred by the Constitution on the Governor-General and would be expressed as being exercisable "at his discretion". In this category of "discretionary powers", the precise range of which it will be impossible exhaustively to foresee until the drafting of the proposed Constitution has reached

letion, it was agreed that the following matters should be added

- ' The power to dissolve, prorogue and summon the Legislature;
- The power to assent to, or withhold assent from, Acts, or to reserve Acts for the signification of His Majesty's pleasure;
- The grant of previous sanction to the introduction of certain classes of legislative measures;
- The power to summon a Joint Session of the Legislature in cases of emergency, where observance of the ordinary time limit to be prescribed by the Constitution would produce serious consequences.

It follows further as a matter of logic from the foregoing proposals that the special powers to be conferred on the Governor-General for the purpose of enabling him to fulfil his responsibilities must be similarly exercisable "at his discretion". To the foregoing must, therefore, be added

- (e) The power to take action, notwithstanding an adverse vote in the Legislature - to be dealt with more fully below;
- (f) The power to arrest the course of discussion of measures in the Legislature - also dealt with below;
- (g) The power to make rules of legislative business insofar as these are required to provide for the due exercise of his own powers and responsibilities.

B. Governor-General's relations with the Legislature.

It is not sufficient, however, merely to regulate the Governor-General's relations with his responsible Ministers, i.e. to relate to matters arising in discussions amongst the members of the executive Government. It follows, from the recommendations of the Federal Structure Committee, upon which these proposals are based, that the Governor General must be given powers which will enable him effectively to fulfil the responsibilities entrusted to him, whether his responsibilities for the Reserved Departments or the 'special responsibilities' indicated above, if their fulfil-

Legislature to which the Legislature will not

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agree.

The general scheme underlying the proposals is that, wherever the Governor-General's responsibilities for the Reserved Departments, or his special responsibilities, are involved, he should be empowered not only, as has already been explained, to act without, or, as the case may be, contrary to, the advice of his Ministers, but also to counteract an adverse vote of the Legislature, whether such a vote relates to the passage of legislation or to the appropriation of funds. It was unanimously agreed that the Governor-General must, in some appropriate manner, be granted the necessary powers for this purpose, and that the exercise of these special powers should be expressed in the Act as being restricted to the fulfilment of these responsibilities. There was some difference of opinion, however, as to the precise form which these powers should be expressed as taking. It was suggested that provisions in any way closely analogous to the existing certification sections of the Government of India Act, namely, s.67B, which enables the Governor-General to secure affirmative legislation, and s.67A(7), which enables him to "restore" rejected or reduced Demands for Grants, would be inappropriate under the Constitution now contemplated, and that the necessary powers should be so expressed as to involve not an overriding of the Legislature but action taken by the Governor-General independently of the Legislature on his own initiative and responsibility. On the other hand the view was taken that it would be unfortunate if the Governor-General's power to secure legislative enactments otherwise than by the normal process of the assent of the Legislature were so framed as to exclude any right on the part of the Legislature to

discuss the terms of such a measure before it was enacted and that the objection to a procedure analogous in form to the provisions of s. 67B or s.67A(7) would be substantially met if the new Constitution were to make it clear that such a measure when enacted, is described, in terms, as a "Governor-General's Act", and does not purport to be an Act of the Legislature, and that votable supply which is, in fact, obtained otherwise than with the consent of the Legislature does not purport to have received such assent.

Notwithstanding this difference as to method there was a general feeling in favour of the provision of powers of this character for use in fulfilment by the Governor-General of his responsibilities for the Reserved Departments and of his "special responsibilities" on the understanding that care would be taken in framing the Bill to make it clear that their exercise was the outcome of the Governor-General's own initiative and responsibility and would in no way compromise either the position of his Ministers in their relationship with the Legislature or the position of the Legislature itself.

12. It was also agreed that for the same purpose it would be necessary to place at the disposal of the Governor General powers analogous to the Ordinance-making powers to

at temporary emergencies contained in c.72 of the existing Act. Indeed, in addition to such a power to be placed at the disposal of the Governor-General "at his discretion" for the express purpose of fulfilling his responsibilities for a Reserved Department, or for carrying out a "special responsibility" there is a general agreement that a similar power should be placed at the disposal of the Governor-General acting on his Ministers' advice, i.e. at the disposal of the Federal Government, to meet cases of emergency when the Legislature is not in session, the finances resulting therefrom being limited in duration to a specified period, their continuation beyond that period being to be dependent upon subsequent ratification by the Legislature.

13. Finally, the Conference were agreed that the Constitution should contain provision requiring the previous sanction of the Governor-General, acting in his discretion, to the introduction of any Bill affecting a Reserved Department, or religion, or religious rites and usages, or any Bill repealing, amending or affecting any Act or Ordinance of the Governor-General, enacted for the fulfilment of his personal responsibilities; and, in addition to this requirement, that the Governor-General should be empowered on the lines of the provisions of s.67 (2A) of the existing Act, to prevent the discussion, or further discussion, of any measure the mere discussion of which, in his judgment, is liable to involve grave menace to peace and tranquillity.

14. It is perhaps desirable to summarise very briefly the substance and effect of these proposals. The intention is that the special powers of the Governor-General properly so described, namely his power to obtain legislation and supply without the consent of the Legislature will flow from the responsibilities specifically imposed upon him and be exercisable only for the purpose of meeting such emergencies as are described above. See also financial safeguards section.

ce of enabling those responsibilities to be implemented. Responsibilities to be imposed on the Governor-General by constitution should be of two kinds - an exclusive responsibility for the administration of the Reserved Departments, "special responsibility" for certain defined purposes outside the range of the Reserved Departments. In the administration of the Reserved Departments Ministers will have no constitutional right to tender advice, though, in practice, they will necessarily be consulted; nor will they have any such right to tender advice on the exercise of any powers conferred on the Governor-General for use "in his discretion". In all other matters Ministers will be constitutionally entitled to tender advice, and unless that advice is felt by the Governor-General to be in conflict with one of his special responsibilities he will be guided by it. If, in fulfilment of his responsibility for a Reserved Department, or of a special responsibility, the Governor-General decides that a legislative measure or supply to the legislature will not assent is essential his special powers will enable him to secure the enactment of the measure or provision of the Supply in question, but Ministers will not have any constitutional responsibility for such decision.

C. Governors' special powers and responsibilities.

5. As indicated in paragraph 2 of this Report, the scheme for the Governor-General's responsibilities and powers described above will be applicable in all respects to the Governor in relation to his Ministers and Legislature, with the following modifications of detail. In the Provinces there will be no category exactly corresponding to the Reserved Departments of the Governor-General, though it may be found necessary to make arrangements somewhat analogous to those involved in reservation

in order to provide for the administration of those areas in certain Provinces which, from the primitive nature of their populations and their general characteristics, will have to be excluded from the normal operation of the Constitution. With this exception, therefore, the Governors' special powers will flow from, and be expressed as being required in order to enable them to fulfil, their "special responsibilities" only.

16. As regards the "special responsibilities" of the Governors, these should be identical with those indicated in the case of the Governor-General, save that the first item on the list would necessarily be confined in scope to the Province, or any part thereof, and not extend, as in the case of the Governor-General, to India as a whole. But in the case of the Governors, it would be necessary to add to the list of "special responsibilities" an item relating to the execution of orders passed by the Governor-General. If the Governor-General is to be charged, as will be explained later, with the general superintendence of the actions of Governors in the exercise of their "special responsibilities," and if, as has already been proposed, he is himself to have imposed upon him a "special responsibility" for the prevention of grave menace to peace and tranquillity throughout the country, it follows that he must be in a position to ensure that his instructions to provincial Governors are acted upon: and consequently that the Governor must be in a position to act otherwise than on his Ministers' advice, if such advice conflicts with the Governor-General's instructions. Finally, it may be necessary to impose upon the Governor a "special responsibility" for the administration of certain excluded

areas if, as seems probable, the arrangements for the administration of excluded areas involve their classification into two categories, one of which would be placed under the exclusive control of the Governor and the other made subject to Ministerial control, but with an overriding power in the Governor obtained in the manner explained in earlier paragraphs of this Report through his "special responsibility".

17. The division of legislative powers between Centre and provinces would no longer make appropriate the concentration in the hands of the Governor-General of the power to legislate in emergency by Ordinance on provincial matters and this power should henceforth be conferred on Governors also, for the double purpose indicated in paragraph 12 of this Report.

18. Finally, the Conference were agreed that insofar as the Governor-General or a Governor is not constitutionally bound to seek Ministers' advice or in any matter in which being bound to seek their advice he is unable to accept it, the general requirements of constitutional theory necessitate that his actions shall be subject to direction by His Majesty's Government and Parliament and that the Constitution should make this position clear. In the case of a Governor the chain of responsibility must necessarily include the Governor-General.

19. It should be explained in conclusion that the recommendations on this Head of the Agenda have no reference to situations where a complete breakdown of the Constitutional machinery has occurred. It was, however, the unanimous view of the Conference that the Constitution should contain separate provision to meet such situations, should they unfortunately occur either in a province or in the

Governor, as the case may be, should be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

1st December 1932.

The following report has been prepared by the Secretariat for the purpose of recording in summary form the effect of the discussions in the Conference on this head of the Agenda.

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HEAD E.
D E F E N C E .

(1) The discussions proceeded on the basis agreed to in the two previous Conferences that Defence should be reserved for administration by the Governor-General as representing the Crown. At the same time His Majesty's Government undertook to consider whether the principle enunciated by the Defence sub-Committee of the first Conference, that "With the development of the new political structure in India, the Defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone", could not be reaffirmed in a manner that would bring it into relation with the new Constitution itself. It was also recognised that the future Indian Legislature should have the same opportunities of discussion in the sphere of Defence as the present.

(2) The suggestion was made that the Governor-General's representative who is to act as Defence Member should be selected from the Members of the Legislature, and further that he should be treated as a Member of the Federal Cabinet though not made dependent

Legislature. It was argued that he could thus maintain a closer contact than could be otherwise secured between the Governor-General and representative political opinion in the sphere of Defence administration. Opinion was, however, divided; and other speakers referred to the difficulty of harmonising the position of the Defence Member with that of a Member of the Legislature dependent on the votes of his constituents, and also that of making him a party to decisions of the Federal Cabinet while he could not share their responsibility nor could they share his. His Majesty's Government expressed their preference for adhering to the conclusion previously recorded that the Defence Member should be appointed at the unfettered discretion of the Governor-General, since this in their view would preserve the essential responsibility of the Governor-General, while it would not rule out the possibility of selection from the Legislature, supposing that on occasion the individual best suited for the post in the Governor-General's opinion was a member of the Legislature.

(3) The Conference discussed what arrangements should be adopted to enable the Governor-General to obtain supplies for Defence purposes without placing

limitations upon his responsibility for the subject. Two alternative schemes were mentioned: either that Defence expenditure should be fixed by a contract system for a term of years, and that the amount so fixed should be settled as far as possible by agreement on each occasion with the Legislature; or that Defence expenditure should remain non-votable but that there should be a system of close consultation between the Governor-General's immediate Advisers on the one hand and the leading Federal Ministers on the other, before the Military Estimates were submitted to the Governor-General for his final approval and for presentation to the Legislature. A preference was manifested for the latter alternative; and it was further suggested that there should be a statutory obligation upon the Governor-General to consult the leading Federal Ministers in the manner indicated. His Majesty's Government felt that a statutory obligation of this kind could not but obscure the distinction between the responsibilities of the Governor-General and those of the Federal Ministers; but they associated themselves with the view that joint consultation in this matter was highly desirable in itself and ought in the ordinary course to become a regular

feature of the working of the new Constitution. They were ready, therefore, to consider any suitable method of formally affirming the desirability of joint consultation, such as the inclusion of some reference to the principle in the Governor-General's Instrument of Instructions, and further to consider how an affirmation in this form could be brought into direct relation with the Act itself.

(4) It was suggested that the importance of rapid progress with Indianisation in the Army should be affirmed in some similar form; and the proposal was also made that a comprehensive programme of Indianisation should be laid down. As regards the latter, the objection was made that the immediate fixation of a final programme, extending as it must over a considerable period, would almost certainly necessitate an extra degree of caution, and that the rate of progress even from the beginning might thus be unnecessarily retarded. The view was stated on behalf of His Majesty's Government that the pace of Indianisation must continue to be regulated by stages, while it was pointed out that a programme of Indianisation already exists which extends much further than the previous

stage and looks forward to still greater developments in future. They expressed their sympathy with the suggestion that some means should be adopted of affirming the importance of the subject.

(5) There was some discussion on the possibility of giving the Legislature a voice in the employment of the Indian Army outside the limits of India. On analysis, it appeared to be implicit in the Reservation of Defence that the Governor-General must be solely responsible for all measures which he judges to be required in the interests of India whether or not these might on occasions involve the employment of Indian Forces outside the actual limits of India. The general conclusion was that His Majesty's Government should consider how far the Legislature might appropriately be given a voice as to expenditure from Indian revenues on occasions when Indian Forces might be lent to the Imperial Government for other than Indian purposes.

December, 1932.

INITIAL.

Copy No: 41

INDIAN ROUND TABLE CONFERENCE, 1932.

(November - December).

I.

The attached Report on Heads G. and H. of the Agenda is circulated herewith to the Conference in continuation of Document R.T.11 issued on 21st December and should be attached thereto.

(Sd.) R.H.A.CARTER.

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Secretary-General,
House of Lords,
S.W.1.

December, 1932.

The following report has been prepared by the Secretariat for the purpose of recording in summary form the effect of the discussions in the Conference on these Heads of the Agenda.

HEADS G & H.

- I. POWERS OF THE INDIAN LEGISLATURES VIS-A-VIS PARLIAMENT.
 - II. CONSTITUENT POWERS.
 - III. FUNDAMENTAL RIGHTS.
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I. POWERS OF THE INDIAN LEGISLATURES VIS-A-VIS PARLIAMENT.

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 felt 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. In his decisions on the admissibility of any given measure the Governor-General would, of course, on the general constitutional plan indicated elsewhere, 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.

II. CONSTITUENT POWERS.

The conclusion just indicated - that the power to vary the provisions of Acts of Parliament should not relate to the Constitution Act itself - led directly to the question of Constituent Powers. Discussion of this question disclosed a unanimous recognition of the fact that it would be impossible to contemplate a delegation to Indian Legislatures by provisions in the Constitution Act of any general powers to alter that Act itself, and that such powers must necessarily remain with Parliament for

required.

2. This head of the agenda was, however, framed on the assumption that there might be some matters in regard to which specific powers might be granted to Indian Legislatures to make modifications, subject to suitable conditions, of the detailed arrangements to be embodied in the new Act. The problem was discussed with particular reference to two matters which, though of a somewhat different character, were found to raise substantially the same problems - namely, (a) the details of the franchise and the composition of the Legislatures - Provincial and Federal; and (b) the alteration of provincial boundaries, or the formation of new provinces. Taking the latter first, there was a general feeling that, while, once the Federation had been brought into being, it would be undesirable to give ground for the impression that the number, size or character of the federating units was to be liable to frequent or capricious re-arrangement at the behest of particular elements in their population - an impression which would be inimical to solidarity and to a settled political outlook - yet the Constitution Act might advantageously provide machinery whereby His Majesty's Government would be empowered, after satisfying themselves that proposals for the re-adjustment of provincial boundaries, or possibly even for the formation of a new province, had behind them a solid backing of popular opinion in the areas concerned, and would not involve undue commitments on the resources of the Federation, ^{or the provinces,} to give effect to such proposals. Attention was drawn in this connexion to the provisions of s.52A of the existing Government of India Act as an indication of the kind of provisions which it might be desirable to retain in

3. AS regards the franchise and the composition of the Legislatures, it was recognised that scarcely any modification of the plans now contemplated for embodiment in the new Constitution could, in practice, fail to raise, either directly or indirectly, the general communal issue. His Majesty's Government had, indeed, contemplated, and had foreshadowed in their Communal Decision, the insertion of provisions in the new Constitution designed to enable, after a suitable interval of time, its modification with the consent of the various communities and interests affected. Discussion, however, disclosed a general feeling that most difficult and controversial issues would be involved in an attempt to define here and now conditions which, on the one hand, would not render the power to make such modifications incapable of exercise, on account of the stringency of conditions to be fulfilled and, on the other hand, would satisfy the several communities and interests that any decision for modification was, in fact, the result of substantial mutual agreement. It was, moreover, generally recognised that the difficulty which thus presents itself in relation to the Communal Award of devising suitable conditions for the exercise of any provisions in the nature of Constituent Powers, in fact pervades the whole problem discussed under this Head. In the course of the discussion a very complete plan was, in fact, suggested as a statement of the conditions to which the exercise of the power (should such be granted by the Constitution) to modify the composition of the Legislatures and the nature of the franchise should be made subject. Objection, however, was taken to this proposal on the ground that its elaboration and stringency were such as, in all probability, to frustrate, in practice, the exercise of

the power, even though there might be a really substantial popular demand for its exercise: it was suggested, therefore, on behalf of those who urged this objection, that a preferable course would be to leave it to His Majesty's Government themselves to determine the nature of the provisions to be framed in fulfilment of their intention that the details of the Communal Award should be susceptible of modification with the consent of the communities affected.

Finally, there was a consensus of opinion that the Constitution should provide that whatever powers were granted of this nature should not be capable of exercise save after the lapse of a substantial period of time from the date of inauguration of the new Constitution, and account was not lost, throughout the discussion, of the probability that Parliament itself, in enacting the new Constitution, would be inclined to approach with great caution any proposals for its alteration otherwise than by means which it could itself control.

, His Majesty's Government took careful note of the very difficult issues to which the discussion had given rise; they were disposed, while leaving unimpaired the authority of Parliament to decide any issues which might present themselves involving changes of a substantial character in the Constitution, to examine with care and sympathy the provision of such machinery as might obviate the disadvantages and inconveniences to be anticipated from the lack of means to secure any alteration of the details of the Constitution as first enacted otherwise than by the difficult and lengthy process of an amending Bill: and would be concerned to see that any provisions designed with this object were so framed as to enable Indian opinion to

III. FUNDAMENTAL RIGHTS.

In the agenda of the Conference the question of Fundamental Rights was purposely linked up with the question of the powers of the Legislatures, because it was felt that it had been insufficiently realised that the effect of inserting provisions of this kind in the Constitution must inevitably be (if they are to be more than expressions of a political ideal, which have never yet found a place in English constitutional instruments) to place statutory limitations on the powers of the new legislatures which may well be found to be of the highest practical inconvenience. The Government have not in any way failed to realise and take account of the great importance which has been attached in so many quarters to the idea of making a chapter of Fundamental Rights a feature in the new Indian Constitution as a solvent of difficulties and a source of confidence: nor do they undervalue the painstaking care which has been devoted to framing the text of the large number of propositions which have been suggested and discussed. The practical difficulties which might result from including many, indeed most, of them as conditions which must be complied with as a universal rule by executive or by legislative authority were fully explained in the course of discussion and there was substantial support for the view that, as the means of securing fair treatment for majority and minorities alike, the course of wisdom will be to rely, in so far as reliance cannot be placed upon mutual goodwill and mutual trust, on the "special responsibilities" with which it was agreed the Governor-General and the Governors are to be endowed in their respective sphere to protect the rights of minorities. It may well be,

propositions discussed can appropriately and usefully find their place in the Constitution; and His Majesty's Government undertook to examine them most carefully for this purpose. In the course of discussion attention was drawn to the probability that occasion would be found, in connexion with the inauguration of the Constitution, for a pronouncement by the Sovereign and that, in that event, it might well be found expedient humbly to submit for His Majesty's gracious consideration that such a pronouncement might advantageously give expression to some of the propositions brought under discussion which prove unsuitable for statutory enactment.

22nd December, 1932.

CONFIDENTIAL.

Copy No. 38

12.

INDIAN ROUND TABLE CONFERENCE, 1932.

(November - December).

The attached Report on Head I of the Agenda -
Form of States' Instruments of Accession, is
circulated herewith to the Conference.

(sgd). R.H.A. CARTER.

Secretary-General,
House of Lords, S.W.1.
21st December, 1932.

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REPORT ON HEAD I
FORM OF STATES' INSTRUMENTS OF ACCESSION.

A meeting was held on the 20th December under the chairmanship of Lord Irwin, which was attended by Mr. Davidson, Mr. Butler, the Representatives at the conference of the Indian States and certain legal experts and officials, to consider the form of States' Instruments of Accession.

. It was agreed that the Federation would derive its powers in part from the powers which the Rulers of the States would agree, for the purposes of the Federation only, to transfer to His Majesty the King for exercise by the Federal Government and Legislature and other Federal organs. In order to effect the transfer of these powers an agreement would require to be made by each State individually with the Crown which might be termed an Instrument of Accession.

. It was agreed that the accession of States whose Rulers are not for the time being exercising Ruling Powers would have to be postponed until their Rulers were in possession of Ruling Powers. Some apprehension was felt as to the consequent reaction at the outset in the strength of the Indian States' representation in the Federal Legislature and it was considered that this question might require further examination in connection with that of the size and composition of the Federal Legislature in order that the position of the representation of the States as a whole might not be prejudiced.

. It was accepted that the formal conclusion of agreements between the States and the Crown could not take place until after the Federal Constitution had been approved

It was contemplated that the provisions of the Act in regard to Federation should not take effect at once but that the Act should contain a proviso that they should be brought into force after a specified period if and when so many States had acceded. This procedure would secure that the States should not be asked to commit themselves indefinitely until they had the complete Act before them. But it was suggested that opportunity might be found to enable the Princes' views on the draft Constitution to be made known to Parliament while legislation was in progress. In particular it was thought desirable that opportunity should be afforded to the Chamber of Princes and the States individually to consider the Constitution as outlined in the White Paper and possibly again at a later stage (e.g. after the Report stage) if important amendments were introduced in the scheme after its discussion in the Joint Committee where the States would be represented and the introduction of a Bill in Parliament.

5. As regards the form of the Instruments of Accession the procedure which commended itself to the meeting as a whole was one whereby the States would convey to the Crown a transfer of the necessary powers and jurisdiction in accordance with the specific provisions of the Act. This procedure would enable respectively the Governor General of the Federation and the other Federal organs established for the purposes of carrying out the Constitution, to exercise in relation to the States and the subjects of their Rulers, but only in accordance with the Constitution, the powers which the Rulers had agreed to transfer and would avoid a reproduction in the Instruments of Accession themselves of the wording of each clause of the Act which related directly or indirectly to the States. But provision would/

and have to be made for the transfer to be limited by exclusion of certain matters.

It was agreed that the Instruments of Accession must provide for exclusion from the purview of the Federation of the powers and jurisdiction in respect of Federal subjects, wholly or in part, which it was not agreed by the individual States to transfer to the Federation, subject to the understanding that there could be no question of a State restricting the transfer of powers as to render its reference to the Federation ineffective.

It was considered desirable that in due course the original draft of an Instrument of Accession should be discussed between the Viceroy and the representatives of the States.

November, 1932.

CONFIDENTIAL.

Copy No. _____

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INDIAN ROUND TABLE CONFERENCE, 1932.

(November - December).

The attached Report of the Committee on Federal
Finance is circulated herewith to the Conference.

(Sd.) P.H.A. CARTER,
Secretary-General.

Secretary-General,
House of Lords,
S.W.1.

22nd December, 1932.

REPORT OF THE FEDERAL FINANCECOMMITTEE.

The Committee was appointed "to consider the question of 'Federal Finance' in the light of the Percy Report, Davidson Report, and suggestions in the Secretary of State's statement of 6th December," and was constituted as follows:-

Lord Peel (Chairman),
 Lord Lothian,
 Mr. Davidson,
 Mr. Butler,
 Sir Akbar Hydari,
 Sir Manubhai Mehta,
 Sir Mirza Ismail,
 Rao Bahadur Krishnama Chari,
 Sir Cowasji Jehangir,
 Sir Furshotandas Thakurdas,
 Mr. Mudaliyar,
 Sir Kripendra Nath Sircar,
 Dr. Shafa'at Ahmad Khan,
 Mr. Ghuznevi,
 Sir Hubert Carr.

Having considered the matters referred to it, the Committee has authorised me to present the following Report.

PRELIMINARY.

1. One essential feature of the general scheme of federal finance outlined by the sub-Committee of the Second Round Table Conference presided over by Lord Peel, namely, the transfer to the Provinces of almost the whole of the proceeds of taxes on income (other than corporation tax), has subsequently been criticised on the ground that it jeopardises the solvency of the Federation by depriving it of adequate access to revenue from direct taxation. The mutual financial relations of the Federation and the Provinces would also remain uncertain and perhaps discordant if the countervailing contributions from the Provinces to
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the Federation, originally proposed for a term of years, could not be extinguished in accordance with a definite programme. The view of the Percy Committee was that no definite time limit could be fixed for the abolition of contributions of such magnitude. A further difficulty revealed by the Percy Committee is that, even on the basis of estimates which assume a substantial economic recovery, certain Provinces might be left in deficit, some possibly in permanent deficit, even if a full share in taxes on income could be handed over to them.

The aims which we have kept in view may be summarised as follows: to provide that all Provinces may start with a reasonable chance of balancing their budgets; to afford them the prospect of revenue sufficiently elastic for subsequent development; to assure the solvency of the Federation; and to ensure that, after an initial period, the federal sources of revenue shall be derived from British India and the States alike. The achievement of all these objects is a task of extreme difficulty, especially at a time of great financial stringency. Nevertheless, the scheme set out in the following paragraphs seems to afford a promising line of approach. We are in general agreement as to its main principles and, subject to a satisfactory settlement of the two important factors referred to in paragraphs 4 and 6 below, consider that it offers the prospect of a solution.

ALLOCATION OF TAXES ON INCOME.

3. As the basis of the scheme we envisage a two-fold
division/

division of the proceeds of taxes on income into shares which would be assigned, as a permanent constitutional arrangement, to the Federal Government and the Provinces respectively.

4. The Federal Government would be entitled to a share based on the proceeds of heads of tax which are not derived solely from residents in British India. We have in mind such heads as corporation tax, tax on federal officers, tax in Federal Areas, tax on Government of India securities, and tax on the incomes of persons not resident in British India. We recognise that the exact content of the list requires detailed investigation and definition by those familiar with the income-tax system, and further that in practice it may not be possible to isolate the yield of some of the heads. It may therefore be necessary, and from the administrative point of view it would in any case appear advantageous, to define at least a portion of the federal share as a percentage of the total yield. These problems, we suggest, should form the subject of immediate examination. It is obvious also that some assumptions will have to be made as to the yield of the various heads of tax. In the meantime we have proceeded on the basis that the five heads quoted above should be permanently federal, and that their yield would be $5\frac{1}{4}$ crores out of the sum of $17\frac{1}{4}$ crores estimated by the Percy Committee to be the normal net revenue from taxes on income. On these estimates, unfortunately, we are unable to report that the scheme is acceptable to all of us. The

success/

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success of the scheme in practice and its virtue in theory depend very largely on the prospective amount of revenue which would be secured to the Federal Government; and, while the representatives of British India are not prepared to go beyond a sum of about 5 crores, the States' representatives maintain that it should not be less than $8\frac{1}{4}$ crores. It is only on the assumption that a share in taxes on income estimated to yield at the outset a minimum of $8\frac{1}{4}$ crores is secured to the Federal Government that the States' representatives have agreed to assume the burden of corporation tax as explained in paragraph 3 below.

5. The whole of the remaining proceeds from taxes on income would be assigned to the Provinces, though their actual receipts might be limited by certain demands of the Federation presently to be proposed. We contemplate that the basis upon which the sum actually available for distribution should be divided among the Provinces would be laid down under the constitution, and generally speaking we are disposed to regard the proposals in paragraphs 74 and 75 of the Percy Report as suitable. These proposals, however, require re-examination in the light of our present scheme, and we recognise that some modification may be desirable.

6. In order to ensure the solvency of the Federal Government until the existing abnormal conditions

have/

have passed and sufficient time has elapsed for the development of new sources of revenue, it is proposed that, out of the provincial share of taxes on income, the Federal Government should retain a block amount for a period of X years. This amount would be deducted by the Federal Government from the total net yield attributable to the Provinces before any distribution took place. In this connection, however, some Delegates wish to state that, in their opinion, the result as between the Provinces would be inequitable since, in effect, each Province would make a special contribution to the Federation in proportion to its individual share of income-tax. They consider that the provincial share of taxes on income should first be distributed, and that contributions should then be taken back on some basis yet to be determined. Delegates from Bengal and Bombay are particularly emphatic on this point. As regards the amount to be allotted to the Federal Government, we are agreed that it should initially be sufficient to balance the federal budget at the outset, and it would therefore have to be determined shortly before the inauguration of the new constitution. In the determination of this amount, the Provincial Governments and the Government of India should, of course, be closely associated. Many members of the Committee consider that, in view of the high level of military expenditure, the possibility of reducing such expenditure should be closely examined

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in determining the initial federal deficit. Indeed, some members go farther, maintaining that the problem of a federal deficit might be entirely eliminated by very substantial reduction in expenditure under this head, and referring particularly to Sir Walter Layton's remarks on the subject. On the question whether the initial amount should continue in full for the entire period of X years we do not express a final opinion, but on the whole we think it might be better to divide that period into two parts. On this basis, the amount would be fixed for a number of years and would then be gradually reduced to zero, on a scale provided under the constitution, during the remainder of the period of X years. As regards the duration of this period, we are unable to report agreement. The States' representatives consider that the minimum period should be ten years, divided into two parts of at least five years each if the alternative proposal just mentioned were adopted. The British India representatives would limit X to four or five years, divided, if necessary, into parts of two (or three) and two years. There is agreement that if, during the initial period, the federal budget showed a prospect of a continuing surplus, relief to the Provinces and States which make special contributions to federal resources, whether direct or indirect, ought to have priority over remission of taxation.

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7. In this connection we note that, if any scheme on the above lines were adopted, the references in the Davidson Report to "Provincial Contributions" should be construed as applying to the block amount retained by the Federal Government from the Provinces (Vide paragraph 26 below.)

8. We also note that, provided a satisfactory yield from taxes on income is permanently assigned to the Federation, the States' representatives agree to assume liability for corporation tax on the expiration of the period of X years, subject to the understanding that, assessment of the tax on the companies in a State having been made, the State may raise the amount due to the federal fisc by any method it may choose, and not necessarily by the actual levy of that tax.

9. In addition to the normal powers of the Federal Government, we also contemplate, as an integral part of the scheme, special powers designed to meet such a situation as might arise if the federal budget, initially balanced by the amount retained from the Provinces, failed to remain balanced despite increased taxation upon existing sources and the development of new sources of revenue permanently allocated to the Federation. It is implicit in the scheme that the Federal Government should do its utmost to develop its permanent resources from the outset. It is accordingly proposed that, so far as British India is concerned, the Federal Government should have power to levy, for its own purposes, additional tax on the heads of income-tax permanently assigned to the Provinces. (In practice, of course, it would

simultaneously/

simultaneously raise the rates of tax on its own corresponding heads.) Whenever this was done, the Federal Government would also levy proportionate contributions on a determined basis (for example, that suggested for a somewhat similar purpose in paragraph 113 of the Percy Report) from such States as prefer not to come into a federal income-tax.

10. Most of us are agreed that, independently of the scheme described above, each Province individually should have a right of surtax upon the personal tax levied on its inhabitants under the heads permanently allocated to the Provinces, subject to a maximum of $12\frac{1}{2}$ per cent. of the tax centrally imposed. This surtax, like all other taxes on income, would be collected by federal agency. Some members, on the other hand, urge that a provincial right of this nature would not only offend against the general desirability of uniformity in rates throughout India, but would affect the reserve of taxable capacity available to the Federal Government in times of emergency.

11. As regards legislative procedure, we propose that the legislation for corporation tax and for the exercise of the special powers proposed in paragraph 9 above should be entirely federal. Legislation for the rates of provincial surtax would be entirely provincial. All other legislation for the imposition of taxes on income, whether affecting the basis of assessment or the rate of tax, would be uniform, and would be effected by the Federal Legislature with the leave of the Governor-General given after consultation with a council of representatives of the Units and of the Federal Government.

DEFICIT PROVINCES.

12. While it is essential to ensure the solvency of the Federal Government and an equitable distribution of burdens among the partners in federation, we recognise also that provincial solvency must be secured if the Provinces are to function successfully. At the same time, we are faced with the insuperable difficulty that financial conditions for some time to come do not seem likely to permit any general distribution of revenues which would automatically bring all Provinces on to a solvent basis, and that some of them might even be in permanent deficit. We propose, accordingly, that any proved cases of deficit Provinces (whether already constituted or newly created) should be met by subventions from the Centre on certain conditions. (The special cases of Bengal, Sind and the North-West Frontier Province are referred to in the succeeding paragraphs, and the probable needs of Orissa are set out in the Secretary of State's statement printed as an Appendix to this Report). 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. We contemplate that the amount would be only just sufficient to enable a Province
exactly/

exactly to balance its budget on a basis of providing for bare necessities. Further, the total sum involved for all the Provinces concerned should be manageable in size and not such as to affect materially the resources which can be made available to the other Provinces. We do not at the present stage give an opinion as to whether any particular subvention should be constant and permanent, or constant and terminating after a stated period of years, or constant for a term of years and then diminishing over a period. This must depend largely on the prospects of expanding revenue in a Province, and the enquiry which established the necessity of a subvention should also be directed to the conditions of its grant. As regards the source from which subventions to deficit Provinces should be derived, the representatives of the States feel strongly that, except in the case of the North-West Frontier Province, they should form a charge on revenue derived from provincial heads of income-tax after the period of X years. The British India representatives, on the other hand, maintain that the charge would be properly federal after the period of X years in virtue of the amount of income-tax assigned permanently to the Federal Government under the scheme suggested in the earlier paragraphs of this Report.

13. In the case of Bengal, we recognise that the difficulties arising from the present distribution of resources are exceptional, and we suggest that they

might/

might perhaps be met by according to the Province some share in the revenue from jute. We make no definite proposal as to the form which this share should take as the question requires technical examination. A suggestion, however, which appears to some of us to afford a possible expedient, is that the export duty on manufactured jute might be removed, and a central excise on such jute imposed, to be distributed to the Provinces in which it is levied. A device of this kind would apparently overcome the serious difficulties likely to arise from giving any authority other than the Federal Government the power to impose export duties, or providing that a portion of the proceeds of any export duty should be assigned to a Province. The delegates from Bengal, however, view this suggestion with strong disfavour. They consider that the deficit position of Bengal should properly be remedied out of the export duty on jute, which is practically a monopoly of the Province. In their view, the whole proceeds of that duty should be allotted to the Province, though, for the period of X years defined above, half the proceeds might be given to the Federal Government.

14. Sind is in a special position in that careful investigations have already been made which show that it

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will be heavily in deficit for a considerable number of years, but that a surplus may eventually be expected to emerge. The whole financial outlook of the Province depends upon the Sukkur Barrage. In this case it is suggested that there should be subventions from the Federal Government on a pre-determined programme. (Some indication of the magnitude of the sums likely to be involved is afforded by the Secretary of State's statement of 6th December, printed in the Appendix to this Report). We also consider that, in view of the financial importance of efficient administration of the Barrage, the Governor of the Province might be given special supervisory powers in relation to its administration. Some members wish to point out that the grant of a subvention to Sind in order to enable its separation constitutes a departure from what, in their judgment, was the principle laid down by the Sind sub-Committee of the first Round Table Conference.

15. A subvention will, of course, continue to be required for the North-West Frontier Province. In order to develop a sense of financial responsibility, we consider that the amount of the subvention should be fixed both initially and on the occasion of each revision for as long a period as may be found possible.

POWERS OF TAXATION.

16. We agree generally with the proposals of the Percy Committee in chapter VI of their Report, subject to such modifications as may be required by the scheme for the allocation of taxes on income

outlined/

outlined above.

17. In regard to the list of "taxes leviable for the benefit of the Units subject to a right of federal surcharge," we contemplate that all legislation should be undertaken by the Federal Legislature.

18. We feel that, if the lists of sources of revenue which it is proposed to insert in the constitution are carefully drafted, the problem of residuary powers of taxation will be reduced to small dimensions. Nevertheless, we consider that some provision for residuary powers is required, and we recommend that they should vest in the Units subject to the condition that the levy of a tax shall not directly prejudice a federal source of revenue.

EMERGENCY POWERS OF THE FEDERAL GOVERNMENT.

19. We contemplate that the special powers, with which we have proposed in paragraph 9 above to invest the Federal Government, should ordinarily suffice to obviate the necessity of emergency contributions such as were proposed in section 21 of Lord Peel's Report, 1931. Nevertheless, we think it may still be desirable to provide in the constitution for such contributions, and we support the proposals of the Percy Report (paras. 112 and 113) as regards both the definition of the circumstances in which they should be levied and the basis of their assessment, except that we prefer in the case of a war emergency that it should rest with the Rulers of the States, as hretofore, to place their resources freely at the disposal of the Crown.

Borrowing/

BORROWING POWERS OF THE UNITS AND SECURITY OF
FEDERAL LOANS.

20. We agree generally with the recommendations of the Percy Committee in paragraphs 117 and 118 of their Report as to the limits within which the Units should exercise powers of borrowing and the machinery required in this connection.

21. We doubt, on the other hand, whether the proposal in section 22 of Lord Peel's Report, 1931, that future federal loans should be secured on the revenues of the Provinces as well as of the Federal Government, would really be effective. On the whole, we consider that it would be advantageous clearly to base the security for future federal loans on the revenues of the Federal Government only. The pre-federation debt, of course, will continue to be secured on "the revenues of India".

CONTRIBUTIONS AND IMMUNITIES OF THE INDIAN STATES.

22. We have considered the adjustments which will be required to enable individual States to enter the Federation, on the basis of the general financial scheme, taking as its leading assumption that in an ideal system of federal finance all Federal Units would contribute on a uniform basis to the federal resources. It is generally agreed that the

terms/

terms of entry of the States into federation should, as far as possible, entail the gradual elimination of contributions of a special character (cash contributions or ceded territories) by certain States to the resources of the Federal Government, and the disappearance of the immunities or privileges of certain States in respect of certain heads of federal revenue (sea customs, salt, posts and telegraphs).

23. To effect the necessary adjustments, separate agreements would require to be made, before the entry of the States into federation, with those now contributing in cash, or which contributed in the past by cession of territory for defence, and also with those now enjoying immunities or privileges in respect of specific heads of federal revenue. We endorse the recommendation of the Davidson Committee that the separate settlement for each State affected should be made by means of a balance-sheet setting off credits (in respect of cash contributions and ceded territories) against the value of any privilege or immunity enjoyed by the State. We also accept as a basis the plan proposed in paragraphs 443 and 444 of the Davidson Report.

24. We have not felt it to be a part of our duty to investigate the correctness of the details as regards existing contributions and immunities or privileges appended to the Davidson Report. Some question has been raised as to

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whether certain immunities should rank for the adjustments proposed, in view of the nature of the consideration which certain States have agreed to pay and are still paying for them. In this connection we note the caution in paragraph 13 of that Report as to the need for verification of the details in the Report, and we assume that the general principles accepted in the foregoing paragraph would be applied with due regard to the circumstances in which the contributions and immunities of individual States originated.

25. On the assumption that the method of adjustment with the States will be as above described, the nature of the settlement, in respect on the one hand of contributions and on the other of immunities and privileges, requires to be considered in some greater detail.

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 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. We accordingly recommend that, generally speaking, these contributions should be extinguished not later than the expiry of the period of X years provided for in paragraph 6 above; and, in case this period should be protracted longer than is expected/

expected, that a moiety should cease to be paid at the latest in ten years from the date of federation, and the whole within twenty years. Some of us would favour the immediate extinction of the cash contributions, but the general view is that, during the period of X years, the entire sacrifice of this source of federal revenue would not be practicable. At the same time, it is the view of all of us that any cash contributions which are continued during the period of X years must be taken in reduction of any contribution under paragraphs 9 and 19 of this Report which the States may be called upon to make during that period.

27. We have taken note of the view of the Davidson Committee in paragraph 95 of their Report that the tributes and cessions of territory for defence have, for the most part, a common origin. 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. 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. Credits in respect of ceded territories should rank for adjustment pari passu with credits in respect of cash contributions.

28. We fully endorse the view of the Davidson Committee that inter-State tributes are anti-federal, and we view with approval the suggestion that these tributes should disappear, or be replaced by some formal token. In any case, we recommend that the Government of India might explore, in consultation with the States concerned, whether the relief in respect of ceded territories, proposed in the preceding paragraph, should be reduced pro tanto by the amount of any inter-State tribute retained by a State which has a claim to relief in respect of ceded territory or tribute.

29. Turning to the question of the immunities and privileges, great and small, which are enjoyed by numerous States, and of which the nature and value is indicated in the Davidson Report and its Appendices, we would reiterate the view that the entry of each State into the Federation should, as far as possible, result in its assuming liability for an equitable portion of federal expenditure. Nevertheless, we agree with the conclusion of the Davidson Committee that, where a State enjoys privileges or immunities the value of which is not off-set by any special contribution,

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that State must retain the balance in its favour, in whole or in part, on its entry into the Federation.

30. In the case of salt, we note with approval the suggestion in paragraphs 230-232 of the Davidson Report that restrictions upon the marketing of salt manufactured in Kathiawar might be removed. We assume, however, that the change recommended would require the agreement of the States concerned before it could be brought into effect in regard to any of them.

31. In the case of sea customs, we note that the present annual value of the immunities enjoyed by fourteen Maritime States amounts to over 1,80 lakhs, and we recommend that the question of extinguishing these immunities by compensation should be left over for consideration after the Federation comes into being. Meantime, however, our general view is that the possession by certain States of an immunity which prevents other States or Provinces from making their full contributions to the Federation, is contrary to federal principles. The existing treaties and agreements must be fully observed and no change made in them without the consent of the States concerned. But we recommend that Maritime States should retain at the most not more than the value of the duties on goods imported through their ports for consumption by their own subjects.

32. Numerous other important questions are raised in the Davidson Report, decisions on which must necessarily affect the adjustments to be made with individual States. We have thought it best to confine ourselves to the broader questions

of principle affecting financial settlements with the States generally. We recommend that the conclusions reached on these basic questions should be applied to the examination of the further questions raised in the Davidson Report which is required before settlements with individual States can be effected.

Signed, on behalf of the Committee,

PEEL.

House of Lords,
22nd December, 1932.

Note.

In the printed version, an Appendix will follow containing extracts from the Secretary of State's statement of 6th December.

CONFIDENTIAL.

Copy No. _____

R.T. 14.

INDIAN ROUND TABLE CONFERENCE, 1932

(November - December).

The attached Report of the Committee on
Financial Safeguards is circulated herewith to the
Conference.

(Sd.) R.H.A. CARTER,
Secretary-General.

Secretary-General,
House of Lords,
S.W.1.
14 December, 1932.

REPORT OF THE COMMITTEE ON
FINANCIAL SAFEGUARDS.

1. The Committee took as the basis of their deliberations paragraphs 18 and 19 of the Second Report of the Federal Structure Committee and the passage which relates thereto in the subsequent Declaration of Government policy by the Prime Minister at the final plenary meeting of the first session of the Round Table Conference on the 19th January 1931. The Committee adhere to the principle that no room should be left for doubt as to the ability of India to maintain her financial stability and credit both at home and abroad.

The Committee examined in somewhat greater detail than was possible at the time of the Second Round Table Conference the implications of the conclusion in paragraph 18 of the Second Report of the Federal Structure Committee that "it would therefore be necessary to reserve to the Governor-General, in regard to budgetary arrangements and borrowing, such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world".

2. We all agreed with one dissentient that the requisite power for the Governor-General could suitably be obtained by placing upon him by Statute a "special responsibility" in financial matters. The terms to be used in defining

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this special responsibility were carefully examined in the Committee. Some of us took the view that it was possible to enumerate exhaustively the occasions upon which the special powers of the Governor General might have to be exercised. The majority of us are unable to accept this view, and are of opinion that the only statutory description of the special responsibility which will serve the essential purpose which all of us have in view is "a special responsibility for safeguarding the financial stability and credit of the Federation."

As in the case of other special responsibilities of the Governor General, the responsibility of the Ministers for the matters committed to their charge will remain unfettered and complete unless and until the Governor General feels it necessary to exercise the powers entrusted to him; and when he does exercise his powers, his action will be so expressed as to make it clear that his Ministers bear no responsibility for it. Unless occasion arises for the exercise of these exceptional powers it will be for the Ministry, and the Ministry alone, to take decisions upon such matters as the means to be used for raising the necessary revenue, for allocating expenditure in the responsible field, and for the programme of external and internal borrowing.

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We are moreover agreed that the Governor General should not exercise the powers in question unless he is satisfied that failure to use them will seriously endanger the financial stability and credit of the Federation, and we suggest that this should be made clear in the Governor General's Instrument of Instructions.

We are also agreed, with one dissentient, that the Governor General should be enabled to obtain the services of a financial adviser without executive power to assist him in the discharge of the special responsibility referred to above. His services should be available to the Ministry as well as to the Governor-General, but he would be responsible to the Governor General and would be appointed by him in his discretion and (in cases subsequent to the first appointment), after consultation with Ministers.

3. It has always been contemplated that the budget should include certain items of expenditure which are declared by Statute to be non-votable, for example, charges in respect of reserved departments and the service of the debt. The Committee endorse this principle.

4. The Committee agrees with the recommendation in paragraph 18 of the Second Report of the Federal Structure Committee that efforts should be made to create, on sure foundations and free from any political influence, and as

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early as may be possible, a Reserve Bank which would be entrusted with the management of currency and exchange. The Committee is of the opinion that the proposals to be submitted to Parliament should be based on the assumption that such a Reserve Bank would have been created prior to the inauguration of the Federal Constitution, and recommends that steps should be taken to introduce into the Indian Legislature a Reserve Bank Bill conceived on the above lines as soon as is possible. Certain requirements must be satisfied before the Reserve Bank could start operations with a reasonable chance of successfully establishing itself; in particular, 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. The Committee recognise that some of these matters are beyond the control of governments but they have been assured by the Secretary of State that, so far as they are within his power and that of the Government of India, they will pursue a policy that aims at the earliest possible realisation of the conditions required for the establishment of the Bank.

The Secretary of State undertook that representative Indian opinion would be consulted in the preparation of proposals for the establishment of the Reserve Bank including those relating to the reserves.

5. In the existing state of financial and economic crisis throughout the world, it is impossible at this moment to predict a definite date by which the Reserve Bank will have been launched. In paragraph 20 of the second report of the Federal Structure Committee it was contemplated that if the establishment of the Reserve Bank/

Bank was unavoidably delayed, some special temporary powers might be given to the Governor-General to control monetary policy and currency pending the establishment of the Reserve Bank. The Committee were informed that His Majesty's Government had carefully examined the possibility of framing special provisions to this end, but that none of the measures which had been suggested would have been satisfactory from the point of view both of the responsibility of the Federal Ministry and of the maintenance of India's credit; and it is important to remember that the maintenance of India's credit is itself one of the essential pre-requisites of the successful establishment of a Reserve Bank. The Committee accordingly have proceeded on the basis that the proposals to be submitted to Parliament would be framed on the assumption that the Reserve Bank will be in successful operation by the time that it is possible to inaugurate the Federation.

The Committee recognise that Indian opinion may well expect some indication as to the course to be followed if circumstances should arise in which, while all other conditions for the inauguration of the Federation have been satisfied, some obstacles remain in the way of the successful establishment of the Bank. The Committee has been assured by the Secretary of State that in this event His Majesty's Government would consult representatives of Indian opinion regarding the course to be adopted in the face of this particular difficulty.

It is on the basis of this assurance by the Secretary of State that some members of the Committee have been able to accept this part of the Report, and they reserve their right to reconsider their whole position should delay in the establishment of the Bank seem likely to result in postponement of the inauguration of the Federation.

6. Paragraph 18 of the Second Report of the Federal Structure Committee laid down that "provision should be made requiring the Governor-General's previous sanction to the introduction of a Bill to amend the Paper Currency or Coinage Acts". The majority of the Committee endorse this recommendation. It necessarily follows that this condition will apply to any provisions which may be contained in the Reserve Bank Act itself laying down the conditions with which the Bank has to comply in the management of currency and exchange.

7. The Committee are conscious of the difficulty in any country of reconciling the introduction of far-reaching constitutional changes necessarily affecting finance with the highly important requisite that the confidence of world markets and of the investor in future financial stability should be maintained. They believe that the Ministry of the future Federation will pursue a course of financial prudence and that the Federation will rapidly establish an independent credit of a high class. Though, in the future as in the past, it will naturally be the aim to obtain internally, so far as possible, such loan funds as may be required, India will doubtless find it necessary to develop a credit that will enable her also to appeal with confidence to external markets. The provisions outlined in this Report are accordingly designed to afford India an assured prospect of maintaining the confidence of the investment market.

Assuming/

*One member can only accept this paragraph so far as it does not conflict with his dissent from para. 2.

Assuming that a prudent financial policy is pursued by the Federation, the Committee feel that there will be no need to call the proposed special safeguards into operation. Their existence should, however, afford reassurance to the investing public at a time when far-reaching developments in the political and financial sphere are being introduced.

23rd December 1932.