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## Topics of the Week.

### Shop Assistants Bill.

MR. R. R. BAKHALE, the well-known labour worker, is the author of a Bill providing for shorter working hours for shop assistants. The measure was introduced in the Bombay Legislative Council last year and on Mr. Bakhale's own motion the Council decided on Monday last to circulate it for expression of public opinion. The Bill explores a fresh field of labour legislation and it is but proper that public opinion should be allowed an opportunity of making itself thoroughly conversant with its provisions. Mr. Bakhale himself disavowed any intention to rush the Bill through the legislature, as he knows only too well that time spent on educating public opinion with regard to it is the surest means of ensuring its success. We doubt not that when the Bill comes to run the gauntlet of public opinion, it will be found to have received a large measure of support, ensuring thereafter its smooth progress to the statute book.

EXCEPT to those who are wilfully blind, the need of the kind of legislation sponsored by Mr. Bakhale will be obvious. The evil of juvenile employment and sweating of juvenile labour in shops is rampant at any rate in the bigger cities, the number of hours for which these employees have to be on duty sometimes varying between 84 and 90 hours a week without any provision for the weekly day of rest. It is not difficult to see how deleterious this must be to the health of the young persons thus subjected to heartless exploitation. Human nature being what it is, it is no use expecting employers to provide of their own volition easier working condi-

tions for their young employees. The only way to tackle the evil is therefore by means of legislation such as that for which Mr. Bakhale has made himself responsible.

THE provisions of the Bill are easily explained. In the first place, the Bill absolutely prohibits the employment as shop assistants of children under 12 and provides for a 70-hour week including meal times for young persons below 18 accompanied by a compulsory half rest-day every week. In the case of young persons working in restaurants, the maximum time for which they can be made to work has been restricted to 65 hours a week. They also have to be given 32 whole holidays on a week day in a year, of which two at least must fall every month and which must include six consecutive ones on full pay. In addition, they must be given 26 whole holidays on Sundays every year. In order to avoid any chance of the Bill's provisions being grossly circumvented, Mr. Bakhale far-sightedly provides for the earlier closing of shops. Under his scheme no shop can remain open after 8 p. m. except on what is termed "the late day", which will ordinarily be a Saturday, when the closing time would be extended by an hour. In the case of restaurants the closing hours would be half past nine and ten in the evening respectively. We can only hope that a measure so conducive to the well-being of young persons will before long be the law of the land.

### Salvage in Quetta.

THE decision of the question how early excavation was to begin in Quetta was made to depend on the opinion of the health authorities by the Government. Col. Russell, the Public Health Commissioner, accordingly visited Quetta less than a fortnight after the earthquake. By that time no less than 31,500 persons had been sent out of Quetta, a step which meets with his cordial approval. The railway camps, he found, were somewhat congested and on health considerations he advises the evacuation of as many women and children from that camp as possible. The health requirements of the outlying villages and hamlets are also, he finds, satisfactorily met by the health staff.

BUT it is on the salvaging of the city area that public interest is centred. Col. Russell estimates the number of human bodies buried under the debris to be between 12,000 and 16,000. During his stay he had some exhumations carried out under his supervision. That experience inclines him to the view that it would be undesirable to undertake exhumations on any very large scale because of the nuisance from stench and flies to which it would give rise. At the same time he suggests that salvaging operations should be undertaken as an experimental measure in

the less populated areas and business quarters of the city, that is to say, in non-residential areas. If excavation work is undertaken on these lines, the discovery of dead bodies would not, in his view, be large enough to demand its cessation provided suitable sanitary arrangements are in existence for their immediate removal and disposal.

AS for excavation in the narrower roads and lanes in densely populated parts, he is afraid it is unthinkable for some months more and, in any case not at all possible very much before March next year. The Government of India approve of the recommendations of Col. Russell and have taken steps to give effect to his recommendations. It is also hoped by them, as a result probably of the Viceroy's visit, that it may be practicable to carry out salvage of a certain number of shops and houses where the danger to buildings is small. We do not think the decision will evoke enthusiasm among property-owners, who earnestly wish for the speedy restoration of their property to themselves. But it may be hoped that, should the experimental excavation work not be found positively dangerous to the health and life of the workers, the Government would seriously consider the advisability of not delaying unduly excavation work in the whole area.

#### Unwise.

HAVING been bombarded with complaints on the score of the oppressive administration of repressive laws in Bengal, the Congress party in the Assembly decided to collect first-hand information on the point. In pursuance of that decision Mr. Mohanlal Saxena started on his mission but has been warned by the Bengal Government against conducting his investigations. In their eyes, his mission is prompted by a spirit of antagonism to Government but not to terrorism. The insinuation is as gratuitous as it is groundless. The Bengal Government should have known it for a fact that as a member of the Congress which regards non-violence as the sheet-anchor of its programme Mr. Saxena could have no manner of sympathy with the terrorist cult. This, however, does not automatically impose an obligation on him to acquiesce in or connive at any measures, however harsh or severe, designed to put down that cult. To abhor terrorism and also to regard with utter repugnance the particular methods intended to check it is a perfectly understandable position. So far as one can see, there is no inconsistency or incongruity in it. But the Government of Bengal think otherwise and are straining every nerve to obstruct Mr. Saxena in the prosecution of his task. In other words they are trying to hide the truth, which is sure to be out one day. We are confident their action will call forth feelings of strong resentment in the minds of all people attaching any value to individual liberty.

INSTEAD of impeding the pursuit of his endeavours, the Bengal Government would in their own interest have done well in co-operating with Mr. Saxena. If the information collected by him had gone to prove the groundlessness of the complaints about ill-treatment of detainees, it would only have raised them in public estimation. If on the contrary it had succeeded in bringing to light cases of wanton and unjustified harassment, the local Government could have taken steps to put them right and to stop injustice being done to anybody. For we cannot believe that Sir John Anderson's Government are out so much to harass and persecute as to keep under res-

traint well-known or suspected terrorists. In either case they should have welcomed Mr. Saxena's mission instead of treating it as a nuisance to be put down. We trust that wiser counsels will even yet prevail.

#### Indian Elections in Kenya.

It appears from the Kenya papers to hand by the last mail that a Bill relating to the constitution and life of the local legislature was recently considered by the legislative council and is at present in the hands of its select committee. One of the Bill's provisions has particular interest for the Indian community, in that it seeks to divide the Colony and Protectorate in three divisions for Indian electoral purposes. It also seeks to enforce a deposit of £50 by intending candidates for election and, last but not least, to increase the legislature's normal life from three to four years.

FOR purposes of the election of Indian representatives, the whole country is at present regarded as one constituency having 3,119 voters electing five representatives. It is not clear how constituencies would be delimited under the proposed measure, nor does one know definitely the Indian community's reaction to the proposal. Since however it makes no change for the worse in the quantum of Indian representation, we may not be far wrong in assuming that our countrymen have no serious objection to it.

BUT the feature of the bill which seems to have met with a considerable measure of disapproval by Indian representatives relates to the period over which the polling of votes is to be spread. The Bill apparently lays down 28 days as the maximum period for the purpose; while the Indian community want the recording of votes to be over, as in the case of the Europeans with their 11 constituencies and about 4,200 voters, on one day. One-day voting was, however, summarily brushed aside as impracticable by the spokesman for Government. One fails to see why what has been found easily possible in the case of the European community with a larger number of voters should be regarded as impracticable in the case of the Indian. It is to be seen what effect the Indian opposition will create on the Government. But should the Government, very unreasonably as it seems to us, persist in vetoing one-day voting, the Indian representatives, like the practical-minded people that they are, have made the alternative suggestion that it should in no case go beyond three days. This at any rate should be acceptable to the Government.

#### A Point Gained.

THE moratorium which was in force in Zanzibar during the year ending June 30 last was, as our readers are aware, extended by six months and will continue to be in operation till the end of the current calendar year. There is every reason to hope that in the meantime the Government would be ready with its proposals for the permanent relief of agricultural debtors. In the very unlikely event of this hope not being realised, it was thought desirable by the local Government to take power to itself to prolong the period of its operation without reference to the legislative council. This proposal was recently discussed in the legislature when the Indian non-official members yied with one another in condemning it. The Government eventually yielded to their pressure and accepted an amendment transfer-

ring the power of extending the period of moratorium from the executive to the legislative council. The good sense displayed by the local Government on this occasion is doubtless worthy of praise.

If the moratorium was misunderstood in any quarter as relieving the debtor for all time from his obligations to the creditor, the British Resident's speech in the Zanzibar legislature should go far to dispel such a misunderstanding. He made it clear beyond doubt that he expected debtors to make every

reasonable effort to pay their debts as circumstances permitted. It is to be presumed that the proposed legislation will contain provision for the establishment of conciliation boards for effecting debt settlements. The Resident hoped that debtors and creditors will use the intervening time for the purpose of arriving at mutually satisfactory arrangements to be confirmed subsequently by these boards. We hope all concerned will profit by this advice on his part.

## ENCROACHMENT UPON STATES' AUTONOMY.

THE rulers of Indian States have very successfully withstood so far inroads upon their internal autonomy. But an amendment made in Clause 45 in the House of Lords on 3rd July infringes their autonomy in such a grave manner as to arouse, we have no doubt, loud and excited protests from all over the States as soon as it becomes known to Their Highnesses what Their Lordships' House has done. Clause 45 is the Clause which comes into effect when for some reason or other the federal part of the constitution breaks down. This Clause gives power to the Governor-General to suspend the constitution either in whole or in part, as the emergency may require, and assume to himself whatever functions and powers he may deem necessary. He may, for instance, set aside the federal legislature and issue edicts which, while the emergency lasts, will have the force of laws duly passed by the federal legislature.

As the Clause was first drafted, no limit was set to the period in which the constitution may remain suspended. All that was provided for was that the Governor-General in his authority could suspend the constitution only for six months in the first instance, after which he had to get Parliament's sanction for the continuance of his emergency powers. But when he had once got this sanction he could go on without any constitutional checks for an indefinite length of time. To this the States took strong exception. While they did not mind special measures being taken outside the limits of the constitution in order to meet an emergency of a strictly temporary nature, they would not allow these special measures to be in operation beyond a certain brief period. The Committee of the States' Ministers, in their memorandum of objections, pointed out that "the possible indefinite suspension of the constitution would also involve the indefinite elimination of the powers and jurisdiction of the States which were delegated to the federation for a particular purpose, which *ex hypothesi* has not been or cannot be carried out. The Committee would suggest a recasting of the Clause so as to make it clear that, if for any reason the constitution is to remain suspended for more than a specified period, the powers granted to the federation by the various States should revert to the States, so that, if necessary, other and adequate arrangements may be entered into."

These representations made on behalf of the States were fully responded to by Government who

agreed to give effect to all the suggestions made therein. Accordingly Clause 45 was amended by placing a limit of three years upon the duration of the suspension of the constitution. "Before the expiry of this time limit either the normal provisions of the constitution would have resumed their operation or an amending Act would have been passed subject to the safeguards for the States provided by Schedule II" (The Secretary of State's Dispatch to the Government of India). We should ourselves have thought that three years would be considered by the States far too long a time during which a constitution could be allowed to remain under suspension without taking the normal course of amending the constitution. But evidently the States did not raise any serious objection on this score. On other points their objections were met in full, as the new subsection (quoted below) which was added to the Clause will show:

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

By inserting this new subsection the Government undertook, before the expiration of three years after the commencement of the operation of the breakdown Clause, to bring to an end the so-called "state of siege" and to restore normal conditions, making it possible for methods of constitutional government to be applied once again. If the constitution could be enforced as it existed at the time, well and good; but if it had to be amended the Government felt confident that they could secure the consent of all the States to any amendments that were necessary. They simply were not prepared to contemplate the contingency in which certain constitutional amendments were required, to which, however, the States' consent would not be forthcoming. Anyhow, by implication, the States secured from the Government a promise that if the constitution could not be brought into force, either as it existed before the breakdown or as amended after the breakdown, the powers surrendered by the Princes for the purpose of calling a federation into being would revert to them. But on no account would they be required to submit

to any special measures beyond a period of three years.

But now let us consider the change introduced into this Clause in the House of Lords. On the Secretary of State's motion the following new subsection was added after subsection (4) reproduced above:

(5) If the Governor-General, by a proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall continue to have effect notwithstanding the revocation or expiration of the proclamation, and any reference in this Act to Federal Acts, Federal laws or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

The explanation which the Marquess of Zetland gave of this new provision was: "The purpose of that proposed subsection is to give permanency to laws which are enacted by the Governor-General during the period of the suspension of the constitution. It might obviously be very inconvenient if the constitution had been suspended for a period of three years and a number of laws had been made by the Governor-General, probably very necessary laws, and at the end of that period of three years those laws automatically ceased to operate. It might lead to great inconvenience and great confusion, and the object of the introduction of this new subsection is to avoid that difficulty."

Their Highnesses will kindly note the words of the Secretary of State: the new subsection will give *permanency* to laws which are enacted by the Governor-General during the period of the suspension of the constitution. Now, does not this mean in effect that the constitution will remain suspended permanently? Does not this Clause now revert to the position which it originally occupied before amendments were introduced into it in the House of Commons in order to allay the States' apprehensions? The States had feared that the emergency would continue indefinitely and that the federal machinery would cease to come into operation for a longer time than they would care to contemplate. They therefore said to the British Government: "This will not do. Fix a time limit for the duration of the emergency, after which the federal constitution must be brought into operation. It may be that the constitution would require some amendments before it can be brought into effect, in which case these amendments must be such as will meet with our consent. If our consent is not forthcoming to any amendments that you may deem necessary, you must stipulate here and now that you will bring into force the constitution as it existed before the emergency arose. We shall submit for a maximum period of three years to the exercise by the Governor-General of powers intended by the constitution to be exercised by the various federal bodies. When these three years are over, the constitution must resume operation exactly in the form in which we have agreed to it. We cannot permit any changes in it without our consent. Nor can we permit any legislative or executive measures taken by the Governor-General in abnormal condi-

tions to continue in operation." To this the Government promised to adhere, but by the new subsection they have gone completely back on their promises.

They promised that the special measures which the Governor-General might feel compelled to take in an emergency would be in force for three years at the outside. Now they say that the special legislative measures which the Governor-General might adopt would be in force, not only during the three years of the emergency, but even afterwards; that in fact they would be the permanent laws of the country. The laws which neither British India representatives nor the States' representatives in the federal legislature have helped pass, but which the Governor-General in his discretion has adopted without consulting either of them, would be binding upon them for all time. This means clearly a reversion as a permanent feature of the constitution to autocratic government by the Governor-General. The danger that the Princes saw in the breakdown provisions of Clause 45 was that the autocratic powers with which the Governor-General would be invested thereby for use in an emergency would continue to be used by him even when the emergency was past. They tried to guard against this danger by imposing a limit of time on the operation of these powers and by providing that if within this limit the powers could not be abandoned, the federation in order to establish which they had surrendered their own authority would be considered as having lapsed and that they would once again be in possession of all their pre-federation authority. The Government, having agreed to respect these claims, now say: "It is true we had promised that the extraordinary measures which the Governor-General may take when the constitution is suspended will not have more than three years' life, but the laws which he may enact within this period will be an exception. These laws will come handy to him, and they will be treated as permanent laws, although they were enacted without reference to you." The plain meaning of this is that, though in form the emergency is limited to three years, in fact it continues for ever, and the special laws adopted will remain in being for ever—until the federal legislature repeals them.

The Princes as a body have been very wide-awake in this matter of federation, and it cannot be that such a flagrant violation of the pledge given to them as is involved in subsection (5) of Clause 45 has not been noticed by them. They must have received the House of Lords proceedings by telegraph as we got them by air mail. We are certain that the new subsection has caused them grave concern and that they are already considering what steps to take in the matter. They are probably already in consultation with Warden Road. They are also in the happy position of extorting full concurrence with their views from the British Government. In this they are very unlike British Indian politicians. While these have failed all along the line in obtaining any the least satisfaction on constitutional reforms, they have succeeded all along the line—so

far. In this particular matter of constitutional breakdown, for instance, the House of Lords has also made a similar amendment in Clause 93 relating to the breakdown of the provincial machinery, by which any special laws made by the Governor in an emergency will be the permanent laws of the Province. But British India has confessedly no power to resist such a provision. We have no doubt that if the Princes will put their point with their accustomed forcefulness they will succeed here also, but if they should fail we for ourselves feel certain that

they will refuse to join the federation. With the ill-will that has been created in British India the emergencies will not be infrequent, to meet which Clause 45 has been devised, and if the British Government, taking advantage of such emergencies, will keep permanently in force laws which may be repugnant to the Princes, we cannot but feel that the Princes will wash their hands of federation. They will never allow such a serious encroachment on their internal autonomy to be made.

## SPARKS FROM THE PARLIAMENTARY ANVIL.

*House of Lords: 1st, 2nd, 3rd, and 4th July.*

**T**HE LORD' House sat in Committee on the India Bill on the first four days in July and disposed of 302 Clauses. On the last two days, however, their Lordships had to sit till half past eleven in order to dispatch this business, instead of rising at 8 o'clock as usual.

### DOMINION STATUS.

It will be remembered that in the House of Commons the Labour Party's amendment to add a preamble to the Bill containing the words "Dominion Status" was ruled out of order, and with a view to preventing the amendment meeting with the same fate in the House of Lords, Lord Snell moved to insert at the beginning of Clause 5 concerning the Proclamation of Federation the following words:

With a view to the progressive realisation of responsible government in British India so that through the natural issue of Indian constitutional progress Dominion Status shall be attained.

"What I want to ensure through this Amendment," said Lord Snell, "is that the British Parliament shall formally assure them (the Indian people) that it does intend at some time that they shall have full control over their destinies" like the other dominions. The Indian people do not expect, he added, "a mechanical similarity" in their status; what they rather expect is "the same freedom and responsibility for the conduct of their own internal affairs as the Dominions now possess." Nor do they expect (he said) that Dominion Status shall be accorded now. In view of the fact that it has been stated on the floor of the Houses of Parliament that declarations of Ministers of the Crown have no binding force, it becomes necessary to make reference to Dominion Status in the statute. It should really have been inserted in the preamble to the Bill. The only explanation that Lord Snell could think of as to why it was not done was:

In order to pacify recalcitrant members of the Tory Party the Government thought they could get out of the difficulty, first, by ignoring the matter; and then, when that was found to be impossible, it had to be dragged out in the way of reluctant declarations at a later period.

leaving it to the Tories to say that such declarations have no validity for the future.

The Marquess of Zetland maintained that there

was no difference of view between him and Lord Snell as to the ultimate position of India in the British Empire. "I have always affirmed," he said, "from the time the Declaration of 1917 was made and the Act of 1919 was passed, that the inevitable outcome of the policy embodied in the Declaration and in the Act must be, sooner or later—though no one, I think, would venture to give a time—that India should occupy in the Commonwealth of Nations which makes the British Empire a position, I will not say, identical with—nor do I think from the noble Lord's speech that he would say so—but analogous to or comparable with that of all the other Dominions in the Empire." But he argued that, it being impossible to give a legal definition of Dominion Status, the phrase could not be incorporated in an Act of Parliament. Lord Ponsonby of Shulbrede agreed that Lord Zetland's declaration was fully satisfactory and said that in it he had himself furnished "a completely satisfactory definition" of Dominion Status. He could not then understand why the words were avoided in the Bill. Lord Zetland had also argued that a preamble or even a clause of an Act with these words had no more binding character than Ministers' declarations, as "any Parliament at any time can repeal an Act which is on the Statute Book," to which Lord Ponsonby replied: "This is perfectly true, but until they (the words of an Act of Parliament) are repealed they are binding."

The Labour Peers who divided against the Government on this amendment were seven: Lords Arnold, Faringdon, Marley, Ponsonby, Sanderson, Snell and Strabolgi. All honour to them!

### SEVERANCE OF THE BRITISH CONNECTION.

IN the minds of some British statesmen at least the real objection to the incorporation of the words Dominion Status in an Act of Parliament is that it will give India the right of secession. It is now well-known from the life of Lord Birkenhead, former Secretary of State for India, by his son that Lord Birkenhead was averse to the use of the words Dominion Status because they might be held to imply complete severance of India from Great Britain. In a letter written by him, after taking the India Government to task for entertaining Pandit Motilal Nehru and Mr. Srinivasa Iyengar, advocates of

India's complete independence, as guests of Government, Lord Birkenhead wrote to the then Viceroy, Lord Irwin :

You will remember that in dealing with the question of the Indianisation of the Indian Army, His Majesty's Government were averse from using the phrase Dominion Status to describe even the ultimate and remote goal of Indian political development, because it had been laid down that Dominion Status means the right to decide their own destinies, and this right we were not prepared to accord at present, or in any way to prejudice the question whether it should ever be accorded.

And after his retirement from the India Office Lord Birkenhead in articles contributed by him to the press severely rebuked Lord Irwin for mentioning Dominion Status in a declaration of Government's policy towards India. There is no doubt that some part at least of the reluctance shown by British politicians to embody the phrase Dominion Status either in a preamble or in an operative part of a Statute arises from the fact that they want to keep India, in law as well as in fact, permanently within the British Empire.

The same point came out in an amendment moved by Lord Rankeillour to Clause 5 of the Bill. After speaking of a federal union between the Provinces and the States under the Crown, he sought to add the words : " And subject to the maintenance of the sovereignty, dominion or suzerainty of the Crown throughout India." The object of this amendment was, as he said, to secure "that if and when the States came into the Federation, the nexus should be the Crown, that their contact should be with the Crown, and there should be no contact with the Provinces of British India." British Indians being apparently desirous of cutting the painter, the States at least, he thought, should be held to their allegiance to the Crown and that they should not be allowed to sever the tie of the British connection along with British India in any conceivable contingency.

I think it would be a real strength and advantage in the future (said Lord Rankeillour), if any part of British India wished to break completely away, that their act would release the ruler from adherence to the Federation, and with all this talk of Dominion Status the danger that I want to guard against is, I think, increased. Dominion Status is undefined and perhaps undefinable, but in a loose kind of way it has been argued that from Dominion Status you must infer a right to secede from the British Empire. I do not hold that view myself, but supposing you had something in the nature of Dominion Status and it was argued that that gave a right to secede it would be monstrous that they should have the power in law, whether in fact or not, to carry the Rulers of these States with them.

It may be, as Lord Zetland replied, that the introduction of the words in the amendment would be altogether without effect and that Clause 110 safeguards the position completely. But the fear entertained by British politicians in this matter is obviously lest some loophole might be found by which, even without the specific mention of Dominion Status in an act of Parliament, the States might be able, after Federal India achieves full constitutional freedom, to get rid of their allegiance to the British Crown, to which they are permanently bound, and to

a specific mention of Dominion Status they have of course an immoveable objection.

#### IS DISSOLUTION OF FEDERATION POSSIBLE ?

A VERY important question was raised by Lord Rankeillour on Clause 6. Schedule II to the Bill mentions a number of provisions which can be amended without affecting the validity of the States' accession to Federation, but the Schedule also mentions numerous exceptions to these provisions, an amendment of which without the consent of the States will affect the validity of their accession. Lord Rankeillour asked : What exactly is meant by saying that their accession will be affected ? Does it mean that if amendments are made in certain provisions of the Act, the States which do not consent to these amendments will acquire the right of leaving the Federation ? Will the Federation, which is supposed to be indissoluble, be in such a contingency dissolved in fact ? Government spokesmen have always avoided answering these questions, for to give a plain and indeed the only answer to these questions would be to admit that the Indian Federation is an exception to the rule that from Federations no secession is ever possible and that from this particular Federation the Indian States can secede in certain circumstances. On this particular occasion too the Secretary of State dodged the question. He did not answer it as he should have.

Lord Rankeillour put a specific point to Lord Zetland. Clause 84 gives power to the Governor to make rules for prohibiting the discussion in a Provincial Legislature of the personal conduct of the Ruler of a State or the asking of any questions thereon. This particular provision forms an exception to Schedule II. If Parliament were to repeal that provision and take away from the Governor the power to prohibit discussion, " would any Ruler," asked Lord Rankeillour, " who felt aggrieved, be able to withdraw his Instrument of Accession from that moment ?" Might his accession to Federation be taken back in consequence of that change ? Would the adoption of this particular change or other similar changes allow a Prince to secede ? Viscount Halifax answered these questions in the following words : " The conclusion, of course, is clear enough, that these matters cannot be amended without affecting that accession of the State, and it is quite clear, if they were amended a new situation would arise which would have to be regularised by a supplementary Instrument (of Instructions) with the State concerned." This answer, however, it can be easily seen, is altogether inadequate. Lord Halifax seems to take it for granted that if Parliament deemed it necessary to amend the provisions of the Constitution Act in a certain way not permitted by the existing Instruments of Accession, Parliament would in the ordinary course of things get the States to change the Instruments of Accession permitting the desired amendments to be made. The matter, however, is not at all so simple. All the States must be persuaded to agree to necessary changes in the Instruments, and if even one State

refused the consequence would be that either the amendments cannot be made or that the States would get the right of walking out of the Federation. The original question therefore remains unanswered, viz., as Lord Raglann put it, "whether the Rulers who accede to the Federation will in any circumstances be able to secede, or in no circumstances."

The question can be answered negatively, as obviously British statesmen want to do, only if they undertake never to introduce any amendment into the federal constitution to which even one of the numerous States which will join the federation is not prepared to give its consent. Lord Lothian put the matter plainly when he said, "There are provisions in the Schedule which will enable the development of this constitution without invalidating the Instruments of Accession. There are certain matters which cannot be altered without the assent of the States." It is only one step in advance from this statement to say that, in order to maintain the indissoluble character of the Federation, the federal constitution must be held to be, in fact if not in theory, wholly unamendable.

#### MINISTERIAL RESPONSIBILITY.

CLAUSE 9 provides that the Governor-General shall take the advice of his Ministers except in cases in which he is "required" to act in his discretion and that he shall be guided by the advice of his Ministers except in cases in which he is "required" to act on his individual judgment. That is to say, except in cases specifically mentioned in the Bill, he will be compelled to consult his Ministers and follow their advice. This is, of course, what happens in constitutionally governed countries, but Lord Rankeillour argued that the Constitution Acts even of Dominion Governments are not drawn in such rigid style. For India, he said, "it is a startling new precedent. It is writing a convention of the British constitution into a statute. . . . There is no precedent for it in any Dominion or Colonial constitution." For instance, Victoria's Constitution Act has the following provision :

The Governor shall be guided by the advice of the Executive Council, but if in any case he shall see sufficient cause to dissent from the opinion of the said Council, he may act in opposition to the opinion of the Council.

Similarly the Instrument of Instructions to the Australian Governors has this :

In the execution of the powers and authorities vested in him, the Governor shall be guided by the advice of the Executive Council, but if in any case he shall see sufficient cause to dissent from the opinion of the said Council, he may act in the exercise of his said powers and authorities in opposition to the opinion of the Council, reporting the matter to Us without delay, with the reasons for his so acting."

Lord Zetland refused to amend the Clause so as to give more latitude to the Governor-General, for "it would mean that in every part of the transferred field of administration and legislation the Governor-General would be entitled to act on his individual judgment."

#### CENTRAL INTELLIGENCE BUREAU.

"UNDER the provisions of the Bill," as Sir Samuel Hoare said in the House of Commons, "the Central Intelligence Bureau remains as a reserved section of the Department of Defence." But Lord Rankeillour felt some doubt as to whether this had been made clear enough in the Bill. The Bureau figures in the Seventh Schedule under the first paragraph of the Federal Legislation List, "but it is only by the vaguest implication that we can see that it is allocated to defence." "I have been advised," he added, "that they might easily find that it could be held that this very important organisation was not a matter of defence." He, therefore, moved an amendment to put this beyond doubt. Lord Zetland, in reply, said, "It is the intention of the Government that the Central Intelligence Bureau should be a reserved subject—that is to say, it should come under the control of the Governor-General in his discretion." He was also satisfied that the intention was made clear in the Bill. He was therefore opposed to Lord Rankeillour's proposal to make special mention of the Central Intelligence Bureau as a part of defence. If this were done it would only have the effect of limiting the scope of Clause 9 (3), under which "the Governor-General has a complete right to decide whether a matter falls within the category of defence or not, and nobody can dispute his decision." If the Bureau were singled out as forming a subject that falls under defence "that would at once tend to throw doubt upon the generality of the power of the Governor-General to treat any subject (as defence) which he considers is a defence subject." The amendment was negatived.

#### A SHADOW CABINET.

LORD RANKEILLOUR also moved another amendment, though with no better success, to the effect that three advisers be provided for the Governor-General to advise him as to what he should do in cases where the question of his using his reserved powers arises. The Secretary of State's reply to this amendment was very like the reply he gave on the previous amendment. He said: "The Governor-General will be entitled to take the advice of any official he likes, the head of any department, any official he likes to consult. I should have thought it was better, on the whole, to allow the Governor-General that discretion rather than set up three special advisers by statute." This would only result in establishing a kind of Shadow Cabinet which would always be standing between the Governor-General and his Ministers, and that "would give rise to enormous friction and would be an incentive to Ministers in India not to work the Bill." Lord Lloyd could not understand why on this particular point the Marquess of Zetland was making so much of friction as if anything else was going to be caused by imposing the Bill upon India. He said :

Friction, we apprehend, must inevitably take place under this Bill, in the Assembly or outside, whenever the Governor-General exercises his special powers. I do not know whether it is realised that another cause of friction is provided in this Bill. Imagine the position of

secretaries to Government when they have to go behind the backs of Ministers to give advice to the Governor-General. It is not going to be a very easy position for them.

#### THE MOST REVEREND PRIMATE'S LIBERALISM!

AN amendment was moved in Clause 12 by Viscount Fitzalan in the interests, as he said, of the six million Christians in India. The particular amendment need not be considered, especially because a decision on the question has been put off. But the most interesting contribution to the discussion was that of the Lord Archbishop of Canterbury, who showed himself willing and in fact anxious to impose any number of stringent restrictions on the power of the Indian Legislatures and Ministers in order to safeguard the interests of Indian Christians, to whom he said it was the British Parliament's duty of giving "quite special consideration." He remarked:

I know that that community has considerable apprehension in certain quarters, and probably more in the Provinces than in the Federal Assembly, that there will be the danger of legislation being brought in which in one way or another will affect their rightful position, their freedom, and their liberty to exercise their religion, and the like. They do not want to leave it to chance, and are anxious to make it plain that the Governor-General or the Governor is specially responsible for the rights of minorities.

What did the most reverend Primate want? That the Governor-General and the Governors should have the power to refuse assent to a Bill which, in their view, was detrimental to the interest of Indian Christians? From this point of view, Lord Zetland observed, the protection afforded by the Bill is complete, for "the Governor-General has an absolute right to refuse assent to any Bill whatsoever." But the Lord Archbishop's troubles were not over. He discovered a grave deficiency in Clause 40. This Clause gives power to the Governor-General to stop discussion of a Bill in the Federal Legislature, but the power can be used only if the peace and tranquillity of the realm are menaced. Why should the exercise of this power, this head of the Established Church in England thought, be so narrowly circumscribed? Why should it not be available for use in the interest of the Christian minority in India? Why should not the Governor-General prohibit discussion of a Bill also on the ground that its discussion may be prejudicial to the interests of Indian Christians? Has anybody ever heard of a more liberal-minded and other-worldly head of a Church?

Immediately on the exhibition of the Lord Archbishop's liberal-mindedness, an opportunity arose for the Marquess of Lothian to show his liberal-mindedness. He was troubled by the thought that it might be possible for Indian politicians, by turning fascist or communist to overturn parliamentary government and abolish freedom, even within the framework of the constitution. In fact "a distinguished leader of the Congress Party" has written a book, he said, "which specifically advocates that development in India." "Such a distortion of the ordinary functions of responsible government" must be prevented by all means,

and his Lordship proposes that such prevention should be made an additional special responsibility by the Governor-General. Lord Zetland, however, gave him an assurance that the Governor-General has already enough power under the Bill, without taking any extra precautions, to prevent such a sinister development of the constitution. "It is quite clear, I think," he said, "that if a really serious attempt were made to subvert the constitution even by constitutional means, it would be so contrary to the whole scheme set out in the Bill that the Governor-General or the Governor, as the case might be, would be entitled to consider whether the time had not come when it was necessary to put in force the powers given to him by Clause 45" and by Clause 93. One can only hope that the troubled soul of the Liberal Peer was set at rest by this assurance that white autocracy will be used to kill brown fascism or communism.

#### "AN UNPRECEDENTED CONCESSION."

THE Bill provides in Clause 13 that the Instrument of Instructions shall be laid before Parliament and shall be issued to the Governor-General only when both Houses present an address to the King to that effect. Naturally when the Instrument is considered in either House alterations may be suggested, and some machinery must be provided in the Bill to reconcile differences between the two Houses. The Bill, however, provides no such machinery, and the Marquess of Salisbury drew attention to it in an amendment and also suggested definite means for resolving differences between the House of Commons and the House of Lords. The Lord Chancellor admitted that the Bill provided no machinery. For he said, Parliamentary sanction to an Instrument of Instructions was an entirely novel thing.

We are introducing in this Bill an unprecedented concession to the control of Parliament. So far as I know, the Instrument of Instructions, which has always existed with regard to all the Dominions in the old days and in the Colonies, and with regard to India to-day, is essentially a Prerogative matter which has been decided by the Executive of the day, and which has never been submitted to Parliament at all. Having regard to the importance of the Instrument of Instructions under this constitution, to the novelty of some of the points which will arise, and to the part which it plays in the proposed new Constitution, the Government have thought it right in this Clause to ask Parliament to undertake a responsibility which it has hitherto never imagined it would be called upon to discharge. Parliament has been called to come into consultation with regard to the Instrument of Instructions; but the Instrument of Instructions still remained a document which has to be sent under the prerogative on the advice of the Executive, and is essentially an Executive matter.

In fact, what will happen, as we see it, is that when the Instrument of Instructions is brought before Parliament, in each House any points of difficulty or objections which may occur to the acute minds of members of either this House or of another place, will be raised in debate and will be ventilated and discussed, and if there should emerge a really serious matter—because it is not intended to use this for merely verbal alterations—with regard to which either House felt that there was a grave objection to the form of the Instrument, it will be open to the Government of the day to withdraw that particular



Instrument and to substitute words which meet the objection.

This unprecedented concession to Parliamentary control has only resulted in placing it within the power of the House of Lords to prevent progressive alterations being made in the Instrument of Instructions even by a progressive Ministry.

#### THE CITY'S STRANGLEHOLD.

LORD STRABOLGI expressed the Labour Party's opposition to Clause 15 giving power to the Governor-General to appoint a Financial Adviser. In doing so, he remarked :

It will be said that he is the watchdog of the City interests in London, who are going to see that Indian finances are managed in the interests, primarily, not of India, but of financial interests in England. That will be said. Distinguished ex-Viceroy and ex-Governors who are in this House at this moment have during their term of office, I know, heard this criticism made of the stranglehold of English finance on India. This Clause is going to give a great deal of ammunition to those who will criticise in the same way in the future, and I am very sorry that it is in the Bill. I have put forward briefly the objections I see to the appointment of this financial adviser. What would be the alternative? I would not have this in the Bill at all. If it is necessary for the Governor-General to have some expert, someone like the economic adviser we are sending out to China, he has power to appoint any one to his own staff. You do not need this Clause. It is dangerous and I think it is bad judgment to put it in. You are making a present to our enemies in India, to those who are out for mischief, of a very valuable weapon against us.

#### NOMINATED ELEMENT.

LORD LLOYD made a very clever speech in moving that 18 additional members be appointed by the Governor-General to the Council of State. He said that the necessity for "ballasting" the results of election by a nominated element was always recognised by the Government. Lord Halifax himself in his dispatch as Viceroy on the Simon Report had strongly urged that the principle of partnership between Britain and India should be given effect to in the legislature as well as in the executive. It could not therefore be maintained that there was an objection *per se* to nomination. He said :

After all, it is not a principle which is in any way repugnant to the Government's policy in this Bill. It is not as if no nomination were being provided for. We have to remember that the Indian States are being allowed to nominate two-fifths of the Council of State and one-third of the Assembly. Therefore, the principle of nomination is in full accordance with important provisions of the Bill. If that is the case, if the Indian States are to have the right to nominate so large a number as that in both the Upper and the Lower Houses, and if my noble friend's policy of partnership in the Legislature as well as in the Executive is a true principle, why should we be the only one of the three partners who should have no right to any nominated element in the new Assembly? It is only logical; indeed, I think it is only fair.

Lord Lloyd forgets that the official *bloc* was dispensed with just because the British Government felt confident that the States' representatives would do duty, and more than do duty, for the official *bloc*. Non-official opinion in British India also is at one with

the Government in holding that the Princely contingent would be even better, from the British Government's point of view, than the official contingent. Lord Lloyd himself referred to the opinion of the Congress President on this point. He said :

I understand that at a meeting held in November last at Bombay a prominent member of Congress, Mr. Rajendra Prasad, emphatically declared that Congress would prefer the Government-nominated members to those of the States, because the former certainly had a wider outlook—I have forgotten the reasons he gave, but he certainly said that he preferred them.

The Secretary of State resisted the amendment on the ground that "the official *bloc* would be only a small and ineffectual irritant." On this point, viz. that the official *bloc* would only cause irritation, Lord Charnwood observed :

Are we not apt to lose sight of the very nature of this Assembly which is being created by the Bill? Here is a body in which you are already giving an influence, which is bound on many occasions and at most times to be preponderant, to a number of nominated members—nominated by the Princes, elected by nobody at all. Among the other elements in the Assembly and in the Council are the representatives of small groups, not elected on any general franchise as with us, but special communal representatives. Why, by its very constitution the whole of this Legislature seems to be composed of these so-called irritant bodies.

Then why boggle at this small irritant?

#### DIRECT ELECTION.

LORD LOTHIAN made out a very cogent case for direct election to the Assembly. He refused to believe that there is even "one atom of truth" in the contention that it would be easier to turn from the indirect system to the direct system than to change from the direct system to the indirect. But he did not think it would ever be necessary to change from the direct to the indirect system. He said :

I think it is an echo of our own Victorian experience in this country at a time when there was not universal suffrage and when it was possible for the members to keep in close personal contact with their constituencies. Admittedly, that is the most desirable form of Parliamentary government, but it is an impossible form as democracy spreads, and it does not really exist to-day in a country where you have constituencies of 40,000, 50,000, 80,000, or 90,000 voters. The old Victorian intimacy has gone and gone for ever. It is inherently impossible under Federation because the whole purpose of Federation is to enable very large areas to be brought into a single Government, a democratic Government, and therefore in all Federations which exist you have the phenomenon of very large constituencies.

Take the United States. You have the whole of the United States, with 130,000,000 people, voting in a single constituency for a President. Each of the 48 States votes as a single constituency for the members who represent them. The State of New York, with a population of 12,000,000 and a large area, votes as a single constituency. In the case of Australia, each of the States elects six members to the Upper House of the Central Legislature. The immense State of Western Australia votes as a single constituency and elects six members in that way. Therefore the big constituency is inherent, with all its difficulties. And I do not believe the difficulties are so great as many people believe. It has worked elsewhere, and to-day new methods are coming into being; in fact electoral methods are changing every day.

Among the new methods he particularly mentioned the radio.

Lord Zetland indicated that the electorate for the Council of State "would be something like four or five times as large as the existing electorate." The present electorate for India excluding Burma consists of about 25,000 voters, and the new electorate would consist of "some hundred thousand electors." But, he added, "it would be the essence of my proposal that you should keep the electorate what I might describe as an aristocratic electorate."

#### AN INDISSOLUBLE HOUSE!

LORD HASTINGS urged that with restoration of the direct system of election to the Council of State, it should also be made a body subject to dissolution. He said:

The Bill provides for the Council of State being an indissoluble body, and it seems to me most inconvenient, that the popularly-elected Chamber is to be indissoluble, and the nominated Chamber—a word I propose to use for the Federal Assembly—is to be subject to dissolution; because a Chamber which has been nominated can be dissolved, but will almost certainly return in the same form as it had before it was dissolved, whereas there is at least always a hope that a Chamber which has been popularly elected will be returned in some modified form. That is not going to be permitted to apply. Whether the Government have in mind some transference of the clauses which touch upon this, I do not know, but it seems to me at least somewhat desirable.

The Marquess of Salisbury also spoke in the same strain, and the point was emphasised still further by the Marquess of Reading. He remarked:

The only further observation I want to make is in regard to an argument that was introduced first by Lord Hastings, and which struck me as well worthy of consideration; that is, that if you once have direct election for your Upper House, can you let the provisions as to the indissolubility of that House stand? With great respect I would beg the Government to consider that proposition. What the noble Marquess, Lord Salisbury, said with regard to this has been occupying my mind very much. We must take care, when we are altering the system of election, as we are doing in this Bill, that we at least do not create some further absolute incongruity in the system devised. I would particularly ask the Secretary of State to consider the position in regard to the Upper House, that it should not be dissoluble and that members elected should be in three definite divisions—three years, six years, and nine years.

Lord Reading further pointed out how the indissolubility of the Council of State would weaken the position of the Governor-General. He said:

What we are most anxious about is that the Viceroy's position should be strengthened and not weakened. That will be done to some extent by the Amendment of Lord Linlithgow. But the moment you say that the Upper House is not to be dissoluble, and that you have got to have your elections in three, six, and nine years, you are going to reduce the power you are giving to the Viceroy by this change from three-thirds to one-third. That is a most important matter. I do not want to dogmatise about it. The Secretary of State will not think I am doing that. All I am doing is putting forward views which have occurred to me as worthy of careful thought so that when we do come to consider this, we may unite in trying to get the best out of the improvement that is made.

But the Secretary of State's heart did not melt by

these appeals. He merely replied: "My conclusion is that you can retain an indissoluble second chamber with the electorate, which I contemplate without difficulty."

#### A WAY OUT.

If the Council of State is by law indissoluble the Legislative Assembly is in fact indissoluble. For, as Lord Charnwood said, "The power of the Governor-General to dissolve the Assembly is a futile one in the Bill as it stands, because the Assembly is indirectly elected by the Provincial Legislatures, and the chances are that if the Governor-General does dissolve the Assembly on any very important measure, he will simply get the same Assembly back again." To make dissolution effectual, he proposed that the Governor-General be given power to direct the Governor of a Province to dissolve the Provincial Assembly, so that the bodies from whom the Central Assembly is to be elected will also be newly elected. Lord Zetland replied that, under Clause 62 (2c) the Governor-General already has the power and that nothing further need be done. On this Lord Salisbury asked whether it was intended that the Governor-General should use the power which he has to this purpose. He said:

May I ask whether it is contemplated that this is the way out of the difficulty of the Governor-General not being able effectively to dissolve the indirectly-elected Assembly? Is that what is really contemplated? Of course, your Lordships have been impressed very much this afternoon by several able speeches delivered from these Benches saying that the power of dissolution does not really exist in the case of an indirectly-elected Assembly. That is to say that if the Assembly is dissolved, the probability is that it will come back exactly as it went away, and that therefore there is no advantage. But of course, if, whenever the Governor-General liked, he might say, "Well, I want to get a new Assembly at the Centre and therefore, in order really to get the fundamental opinion of the people, I will direct all the Governors at the same time to dissolve the Provincial Assemblies"—if that is really the expedient upon which the Government are going to rely, that would be a solution.

In reply, of course, Lord Zetland had to say that though the Governor-General had the power, "it was not actually the intention of the Government that this power should be used for this particular purpose." There is thus really no way out.

#### POLITICAL PRISONERS.

LORD FARINGDON of the Labour Party must have shocked the House of Lords by proposing the deletion of the Clause disqualifying people sentenced to two-years' imprisonment from being chosen as members of the federal legislature. He said, his motion is based "on two perfectly sound principles of English practice—the principle that a man who has served punishment for a certain crime thereby expiates that crime and becomes again a fully accredited member of society, and the principle that electors are perfectly entitled freely to elect whom they will to represent them." "In any case the majority of these prisoners are drawn from the small bourgeois class in India. They are not, I think, very dangerous revolutionaries, and they are the class for whom this

Bill frankly caters. . . . I think it unlikely that a great number of terrorists would be elected, and in any case, if they were not in prison or under detention, I consider that if they were still terrorists the interior of the Legislative Assembly might be a very safe place to keep them." Fancy this being said in Their Lordships' House!

#### "WEIGHTING THE SAFETY VALVES."

LORD FARINGDON also moved an amendment for the abolition of the Second Chambers in the Provinces in a speech of great force and vigour. Second Chambers are needed as a check on headlong progress in legislation of a revolutionary character. In India there is no possibility of such legislation, and the Second Chambers can only slow down still further the snail's pace of social legislation in this country.

With more Legislative Assemblies elected on the franchise which is at the moment being extended to the election for Provincial Governments, I do not think that any particularly hot-headed legislation is to be apprehended or expected. They have, in addition to a very limited franchise, also a special representation for commercial, conservative and, indeed I may say, reactionary classes; I do not see, therefore, that the Second Chambers can possibly be needed in order to curb their turbulent revolutionaryism. I may be wrong, but it seems to me that the steadying influence is superfluous and that they are not needed.

He remembered that he had to appeal to a second chamber for the abolition of a Second Chamber, and he said: "Your Lordships' House, of course, is in a slightly different position;" "in this House we have the honour and privilege of having an immense reservoir of political, commercial, diplomatic, financial and military experience," but Indian Upper Houses will be lacking in these qualities entirely. "They will be merely reactionary bodies which will irritate and cause friction between themselves and the Lower Houses. And, of course they will stand in the way of any kind of progress." "These Second Chambers are being put like a weight on the safety valve. I do not consider for a moment that the Legislatures you are setting up are particularly good safety valves at all, but with these Second Chambers you are weighting the safety valves to a point where I fear that you may have very serious results." At their best they will be "superfluous and unbelievably expensive institutions."

#### WHY ARE THEY SET UP?

IN some Provinces the Government have been obliging enough to create Second Chambers, but have withheld them from some. Why this discrimination? In the House of Commons Sir Samuel Hoare explained that the matter was left very much to the wishes of the Provinces. If local opinion wanted them they were set up; if local opinion did not want them they were not set up. One did not hear this argument in the House of Lords. Viscount Halifax gave an entirely different reason. He said:

It has been throughout the purpose of the Government to establish Second Chambers where there was the material from which they could be suitably equipped, and for the general reasons that would seem to justify the

establishment of Second Chambers, in spite of the condemnation of them that has fallen from noble Lords opposite. I confess that it is the view of His Majesty's Government that in India, embarking upon a new career of responsible legislative power, there is everything to be said, where material for such Chambers exists, for establishing such Chambers for the purpose of revision and the encouragement of prudent legislation and resisting imprudent legislation, at all events giving the other Chamber the opportunity of second thoughts. It is not at all true, of course, that the object of these Chamber, is, as noble Lords would suggest, to entrench privilege or to afford merely one more tiresome check upon the opportunities of India to adopt a progressive policy. But it is desired, and I am sure that it is rightly desired, to ensure that in the new Legislatures in India all substantial elements and interests should be reasonably represented, and in the view of His Majesty's Government that can best be secured, where the *personnel* exists to supply the material, by the establishment of Second Chambers.

#### WHY NO SECOND CHAMBER IN THE PUNJAB?

IF this is the general policy, surely there ought to be a Second Chamber in the Punjab, and Earl Peel brought forward an amendment to establish one there. In that Province, as he said, "above everywhere else in India, you require stability," and certainly there is ample material there for the establishment of a Second Chamber, and in any case more than in Assam which is now to have the blessings of a Second Chamber. Did the Punjab Legislative Council turn down the proposal? What do you care for public opinion? You foisted them on Madras and Bombay where public opinion was dead against them. The reason for not endowing the Punjab with a Second Chamber was thus explained by Lord Zetland:

So far as we are able to form an opinion, this matter in the Punjab has been viewed by the people there mainly from its communal aspect. As noble Lords well know, the communal question in the Punjab is an extraordinarily difficult one. It is complicated by the existence there of a third community of great importance which insists upon special representation for itself—namely, the Sikhs. So that you have there not only the Moslems and the Hindus, as you have in other Provinces, but you have the Sikhs to consider as well, and the result of that state of affairs has been that the communal balance in the Legislative Chamber in the Punjab is an exceedingly delicate one. Under the Communal Award it is really a matter of one seat. That being so, the Moslems in the Punjab, undoubtedly, unless they have changed their opinions recently, were very apprehensive that if a Second Chamber was established there the communal balance might be upset. It is quite true that under the Communal Award His Majesty's Government made it quite clear that in the case of a Second Chamber being established in any particular Province, care would be taken not to upset the communal balance existing in the Lower Chamber, but the apprehension of the Moslems in the Punjab has undoubtedly been that the balance was so delicate that it might not be found possible to establish a Second Chamber without upsetting the balance.

When this question was discussed in the Commons, Sir Samuel Hoare carefully refrained from referring to the Sikhs. But Lord Zetland was a little less cautious. However, it must be said to the credit of the British Government that they will even now be prepared to confer upon the Punjab the high privilege of having a Second Chamber if the Mahomedans, who have to be conciliated at all costs, do not

utterly object and decline to accept the gift. The Government's attitude on this question in general certainly gives support, as Lord Faringdon observed, "for the accusation which has been frequently levelled against the Government of India that it has a strong pro-Moslem and reactionary tendency."

#### RESIDUAL POWERS.

ON the question of the residual powers of legislation arising on Clause 104 the usual explanation was given that, Hindus and Mahomedans being divided as to the location of the residuary jurisdiction, the Government took the decision that they did. Lord Raneillbour elicited information on this point as below :

May I ask whether there is any precedent for this power of residual legislation being placed on the head of a State? I understand in most Federations either the Provinces or the Federal Government have certain powers assigned to them and the residue is given to someone else. In this Bill you try to draw a clean line of demarcation and allot certain powers to the Federal Legislature and certain to the Provincial Legislatures. That means that there may be a gap and you profess to fill up that gap by allowing the head of the State to say, in some new case where something that has been forgotten turns up, which it should be. In other words you give him an original legislative power. Now is there any precedent for this anywhere?

The Marquess of Zetland replied :

The great difficulty was, so far as I remember, that the Moslems would not agree to the residual powers going to the Centre and the Hindus would not agree to the residual powers going to the Provinces. The compromise which was arrived at as the result of that unhappy state of disagreement between the two major communities was that it should be left to the Governor-General in his discretion to assign, so far as I remember, particular items under his residual powers to the Centre or the Provinces, as the case may be.

#### APPEAL TO THE PRIVY COUNCIL.

AN amendment was made on the motion of Lord Zetland, by the addition of a new subsection to Clause 110 which preserves "the right of appeal to the Privy Council in any matter by special leave." The subsection that has been added is as follows :

(Nothing in this Act shall be taken to empower the Federal Legislature, or any Provincial Legislature, except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any Prerogative right of His Majesty to grant special leave to appeal from any Court."

On an inquiry made by Viscount Bertie of Thame,

the Lord Chancellor explained the effect of the new subsection as follows :

May I reassure the noble Viscount, Lord Bertie, that the Prerogative right of His Majesty is the right which he has by virtue of the Prerogative to grant special leave to appeal to the Privy Council. That is the Prerogative right—to grant special leave to appeal to the Privy Council, although there is no provision for appeal, and that is a right which the Privy Council has held, apart from the Statute of Westminster, which could not be taken away, because it is the right of a subject to apply to the King by petition, and only express legislation can deprive him of that right. These words are words which are apt, exactly, to cover that particular right. It is not the appeal as a right, it is the Prerogative right of His Majesty to grant special leave to appeal which remains unaffected and which, by virtue of these words, cannot be affected by any local legislation.

#### REMISSION OF TRIBUTES.

NO better summary of the many contradictory statements made on this question can be compiled than was given in a few sentences by Lord Darcy (de Knyath). He said :

We have had the Commission of the noble Earl, Lord Peel, which recommended that tributes of a feudal nature should not be continued. We have had the Davidson Commission, which said that feudalism had nothing to do with these tributes. We then had the noble Lord, Lord Hutchison of Montrose, who said that the intention of that Commission was that these tributes were to be remitted in any event. And we have also the statement in his own Report—page 164, I remember—in which it was said that they desired to make it abundantly clear beyond the possibility of error that nothing recommended or said in that Report had any application whatever to such States as did not enter this Federation, if there were any.

#### BREAKDOWN CLAUSE.

IN our leading article we have discussed the main amendment made in Clauses 45 and 93, but another amendment was made in these Clauses which may be referred to here. The Clauses as they left the House of Commons allowed the heads of Governments to issue proclamations suspending the constitution for six months and taking a refresher of the emergency powers from Parliament every six months within the maximum period of three years of emergency. Now, under the amended Clauses, the emergency powers taken from Parliament will last for twelve months instead of six.

## Federation Turned into a Confederation.

**E**VEN Bhulabhai Desai can find apologists among Congressmen! They gravely ask: "What does anyone lose because direct reference to the States' people is omitted from the Bill?" It is admitted that the eventual omission of these words from Clause 6 of the Bill is due to the advice tendered to the Princes by Mr. Bhulabhai not only as a professional lawyer but as a Congress politician. But it is contended that the omission does not hurt the interests of the people in any way.

A simple answer to such an argument would be

that since the Princes fought so hard for the omission there must be something in it. The Princes are not the kind of people to carry on a controversy with the British Government for nothing. They surely hoped to obtain some advantage therefrom. What was the advantage they sought to gain and was the advantage not to be gained at the expense of the people at large? These are the questions that one has to ask oneself in considering this question.

Mr. Bhulabhai has left us in no doubt as to his own motive in advising the Princes to press for the

omission of a reference to the States' people. "The object of that omission," says he, "is to prevent the establishment of a direct relationship between the subject of a State and the Federation. The process by which the federal laws are to be made applicable to the subject is by virtue of the obligation of ensuring that due effect is given to this Act within the State. It may be arranged that simultaneously with the passing of any Act by the federal legislature a proclamation of the ruler of a federal State should immediately follow, declaring that to be a part of the law of the State."

The Princes accepted this opinion in its entirety and it found a place in the report of the States' Ministers' Committee. The report says on this point, after detailing the Princes' objections to Clause 6 on other points: "The Committee are also clear that there should be no misapprehension that the acceptance of the Act does not mean or lead to the inference that the legislation is applicable to the States *proprio vigore*." The Committee, in order to carry out this object, suggested a new draft of Clause 6, in which all reference to the States' people (Mr. Bhulabhai and the Ministers insist upon calling them the State's subjects) was omitted, and this draft with a few verbal alterations was accepted by the British Government.

What, then, was this change intended to secure? It intended to secure this, that even if a State joined the federation and accepted a particular subject as a federal subject, the laws passed by the federal legislature should not even then come into operation in that State, without the consent of the ruler; that the ruler may agree in advance that all the laws passed by the federal legislature in respect to the subjects agreed to by him as federal subjects will be made applicable in his State; that all the laws will thus come into effect eventually, but they will come into effect not because the federal legislature has passed them, but because the ruler has chosen to adopt them as his own laws; that the federal legislature and the federal Government will have no immediate authority over his subjects, but that he must be recognised, even under federation and even in regard to subjects accepted by him as federal, as the only source of authority; that the federal legislature and the federal Government must always act through him; that he surrenders no part of his sovereignty to the federation, but that he, in each case as it arises, gives his consent separately to the execution of the federal laws in his State without the slightest prejudice to his sovereign rights.

In other words, Mr. Bhulabhai's advice to the Princes is: "Enter the federation by all means. You will gain immensely in actual power thereby. It is true that under a normal federation, the federating units suffer a loss of sovereignty. However, in your case the loss will be merely nominal. For you are proposing to enter federation only in respect of those subjects over which you have already given up effective control. You have already surrendered authority in these matters to the Government of India. But I will suggest to you a way in which,

while regaining actual control that you have lost, you will not have to surrender your sovereignty even in theory.

"My remedy is very simple. Agree to enforce all the laws passed by the federal legislature; only insist that your own formal consent will have to be taken before any particular law is enforced. The consent will be given as a matter of course in all cases. Only the formality of giving consent will have to be repeated in each case. It is a mere formality; but it will save you from the loss of sovereignty which is implicit in every genuine federation.

"It is true that, in that case, this will cease to be a genuine federation. It will in fact be a confederation; but you know I am not really in favour of federation; I am in favour of confederation. I did not feel any the slightest pricking of conscience when I drafted the Patiala Memorandum, of which the object was to jettison the federal scheme. How I wish federation had been scrapped as a result of my Memorandum and an openly avowed confederation had been adopted! But, alas! that was not to be. Still there are ways in which we can in fact convert this federation into a confederation, without calling it so. To give it the proper name would rouse suspicions. Let us therefore continue to call it by the name of federation. But you may rest assured that it will be as different from genuine federation as chalk is from cheese.

"For the true index of a federation is that the federal Government should operate directly and immediately on the inhabitants of the federating units; that the units sign away for once and all their rights of sovereignty over subjects of national interest; and that their consent—formal consent though it be—is not required to every federal law. Any Government in which such consent becomes necessary to each law as passed even when it relates to federal matters is a confederation, parties to which retain their sovereignty in full, but agree by a contract to follow a common policy in respect to certain specified matters.

"All that is necessary to transform this so-called federation into a confederation is to take out just a few words from Clause 6 of the India Bill. This Clause, as now drafted, says that the ruler of a federating State will agree, in the case of federal matters, that the federal legislature and other federal authorities 'shall exercise in relation to his State and to his subjects such functions as may be vested in them by or under this Act,' and that in the Instrument of Accession federal matters shall be listed 'as matters with respect to which the federal legislature may make laws for his State and his subjects'. Get these three words 'and his subjects' removed from the Bill, and as if by magic this much vaunted federation will be turned into a confederation, just the kind of confederation that I advised His Highness the Maharaja of Patiala to see established.

"You are perhaps wondering how the omission of these three words from one Clause of a Bill having more than 450 Clauses in all would do the trick. But believe me when I tell you from my long ex-

perience as a lawyer that the thing will be done, and, what is more, that it will be done without anybody knowing it. You have no idea how easy it is to deceive the poor Indians. You need have no anxiety that they will ever find it out. Indians are the most gullible people in the whole world. Talk of confederation, and they will raise a hue and cry, as I found to my cost. But pretend to accept federation, and you will at once throw them off their guard, and then you can have your own way. You must go quietly to work with Indians and you will be able to get almost anything out of them. Put implicit trust in me, and I will see to it that federation is wrecked and confederation is installed in its place."

Mr. Bhulabhai has succeeded in wrecking federation, and we should not have minded it at all, but for the fact that federation has given place to something worse—confederation. For the three words which he advised the Princes to get deleted have been deleted, and though the scheme will still continue to be called a scheme of federation it will in fact be a confederation scheme. Only in one thing the great Congress leader has failed. The change has not been brought about without the people noticing it. Indian people may be easily taken in, but they are not quite so easily taken in as Mr. Bhulabhai imagines. And if Mr. Bhulabhai's leadership is to rest on the Indians' supposedly inexhaustible fund of gullibility—well, he may have to retire from the stage soon after his debut.

A. V. PATVARDHAN.

## Review.

### ECONOMICS AND POLITICS.

THE ECONOMIC BASIS OF POLITICS. By CHARLES A. BEARD. (Allen & Unwin.) 1934. 20cm. 99p. 3/6.

THIS small volume is an attempt to provide a historical explanation of the phenomenon that the ballot-box has failed to solve the problem of bread in the present-day world. "Has political democracy solved the problem of ages? Is it a guarantee against the storms of revolution? Does it make impossible such social conflicts as those which tore ancient societies asunder? Does it afford to mankind a mastery over its destiny? To ask these questions, says the author, is to answer them."

And why? The reply of the author in the light of history is clear and unmistakable. Examining the philosophy of six great political thinkers such as Aristotle, Machiavelli, Locke, Madison and others and surveying the changes in the constitutions of civilized countries by which they were deliberately fitted to the new divisions of society based upon economic interests, the author comes to the conclusion that at all events statesmen spoke not of abstract men and abstract rights but of real men (of property) and real rights (p. 67). In the midst of this line of practical statesmen came Rousseau who talked of abstract equality of men, divorced from all economic interests and group sentiments. Enchanted by the phantom of political equality the 19th century politicians accepted the doctrine and tried to bring it into operation, the result of which was that "the

state passed from the hands of practical and informed men of affairs into the control of 'politicians'—men without any business qualification, whose stock in trade was oratory." The democratic device of universal suffrage could no longer remove the worst of inequalities in society, the reaction against which steadily grew and resulted in a communistic revolution in Russia which was, in the author's opinion, nothing more than "a simple and an artistic attempt to dispose of the contradiction between political theory and economic facts" (p. 95). But the Soviet system was a peculiarity in itself, in that its class war tried to create a classless society. But the working of the Soviet system for the last fifteen years or so confirms the view that "even an allegedly classless society is divided into economic groups by occupations and possessions, and that when the capitalists as such are cast off the distribution of wealth remains a matter, if not an issue, of politics. The inevitable conclusion, according to the author, therefore is that the franchise ought to be based on property qualification and the aim of the state ought to be to protect and adjust from time to time the conflicting interests of economic groups in the state. "In other words, there is no rest for mankind, no final solution of eternal contradictions. Such is the design of the Universe."

On reading the book one is tempted to think that the economic factor in the formation of a stable state is rather overemphasised by the author. A general review of the forms of state, its changes and occasional revolutions in Asiatic countries would reveal the fact that where tradition and religious sentiments play an important part a fairly stable form of government can be devised by balancing the conflicting religious elements in society and improving the means to check the impetuous tendencies of the majority in the country by favouring from time to time the minorities therein. The very success of the British Government to maintain a rule of peace in India for over 150 years without any attempt at the adjustment of economic groups is an instance that could show to the author that he has clearly overemphasised the economic factor in the formation of the state.

R. V. OTURKAR.

### SHORT NOTICE.

YOUNG INDIA, VOL. III—1927-28. By M. K. GANDHI. (Ganesan, Madras.) 1935. 19cm. 1104p. Rs. 4/-

MESSRS GANESAN are doing a great public service by bringing out in book form the valuable thoughts of Mahatma Gandhi as they have appeared in the columns of *Young India*. This volume is the third one in the series. It is a closely printed volume of over 1100 pages. As such it is a marvel of cheapness. It is a "Guide to perfect life," as Rajen Babu truly says. It reflects the moods of Mahatma Gandhi during two years of political depression and from its perusal, we understand how rigorously and consistently he applies his ethical code to the passing events of the day. It records his views on Ahimsa, on self-control, on Khadi, on Hindu-Muslim unity, on capital and labour and diverse other problems. No student of Gandhi's life and politics can afford to neglect this book which along with the two companion volumes "Young India" (1919-1922) and (1924-26) forms an excellent reference book on 'Gandhi and Gandhism'

A.

## ABOLITION OF SECOND CHAMBERS.

### LORD STRABOLGI'S FORCEFUL PLEA.

*Following is the speech which Lord Strabolgi made in Committee in the House of Lords on 3rd July in support of an amendment moved by Lord Faringdon for the abolition of Second Chambers in the Provinces. It gives a very correct description of the general features of the Bill:*

PERHAPS the Minister of War (Viscount Halifax) would allow me to say a few words in support of my noble friend in the Amendment which he has so ably moved. As I wade again and again through this Bill—a very fascinating occupation; I do it on Sundays now instead of reading the *Observer*—I am more and more astonished at the extraordinary maze of safeguards and what my noble friend called safety valves, and checks and brakes. Whoever was responsible for the drafting—I suspect the noble Marquess on my right, Lord Lothian, had something to do with it—has shown extraordinary ingenuity. Only a Liberal, and a hereditary Liberal at that, could have devised such a Constitution; it has the mark of Whiggery right through it. This is the great reason—though there are also very solid reasons which I shall adduce in a moment—Why my noble friend is absolutely right in moving to leave out Second Chambers for these Provinces. You have first of all the Governor-General, with immense, unlimited powers. He has every power and attitude of a dictator, and in addition to a dictator's powers he is supported by a force not drawn from the people he rules. Secondly, as my noble friend has pointed out and as my noble friend Lord Snell has again and again complained of with great ability, you have this weightage of the propertied classes in all the Assemblies. Thirdly, you have this appalling, anti-democratic, communal system of voting, where people do not vote because they believe in a certain political programme; where they do not even vote because they think that a local magnate is a good representative; but they vote on a religious basis, which we in the Labour Party already know, when we have to fight it in Glasgow, Liverpool and elsewhere, to be one of the most reactionary means which can be devised for preventing real political progress.

Then you have the Princes. The few Princes I have had the honour to meet I have found very advanced politically. Their sons of the younger generation I have found extraordinarily progressive in their views. But it is a fact that their Ministers, mostly elderly men of great ability, grown grey in the service of their States or of British India, represent a very conservative faction, and I do not say that in any spirit of criticism. It is admitted, and it is one of the comforts offered to doubters and agnostics in the Conservative Party about this whole policy, that the Princes and their Ministers and advisers will exert a steadying influence. You have

all these steadying influences, and on top of this, in addition to all these safeguards, brakes and checks, this network of obstacles to progress in India, you propose these Second Chambers; and as my noble friend has said, with respect to Second Chambers apart from this country—I am not now talking of your Lordships' House at all, the conditions are altogether different—every country which has a Second Chamber wants to be rid of it. In France the Senate is looked upon as a great check to progress. As to the Senate of the United States, some of the writings of the noble Marquess on my right show how the Senate is a check upon getting anything done. In Germany the Second Chamber has ceased to exist, and in Italy it is a shadow.

In addition to the objections to putting more checks and safeguards, as represented by this Second Chamber, there is this. India, I submit, with respect to the brilliant constellation of Viceroys and ex-Governors who adorn this Chamber, does not need cautious policies to-day, but very bold policies indeed. The out-of-date system of land tenure, the poverty, the terrible poverty, of the masses on land and in the industrialised cities, some of the caste customs, which literally check ordinary material progress—these things need abolishing, and abolishing quickly, and radically, and boldly, and the last things which I submit you want in India are constitutional checks and additional means of preventing the rapid reorganisation and replanning of the whole economic system in India. For those reasons I congratulate my noble friend on this Amendment. It is a very important one, indeed, and I have ventured to offer a few remarks upon it.

From the very little I have seen of India, from what I have learned of India, and from the few visits I have made there, the one thing which struck me about that country was its intense conservatism. I think everyone who knows India will bear me out in that. I suppose no country has changed so little in fundamentals except possibly China. The same rituals and methods have gone on for centuries in that country and, as the late Mr. Montagu said, "We need to stir the people out of their complacent contentment." The last things you want are artificial checks to progress, such as this artificial Second Chamber which you propose to create—not a natural Second Chamber, not a natural aristocracy, which you could understand, having regard to the traditions of India, but an artificially created Second Chamber—for the purpose of slowing down progress and preventing changes, and keeping the brake on all the time. If you keep the safety valves screwed down too closely, as has been said, there is danger of explosion, and unless there is more progress there will be an explosion, and all these wonderful constitutional buildings will be swept aside. It is a very serious question, and I hope the Government will give us some comfort with regard to it.

#### BOOKS RECEIVED.

- THE DEMOCRATIC PROCESS. By BENI PRASAD. (Oxford University Press, Bombay.) 1935. 22cm. 301p. Rs. 7.  
 MUGHAL EMPIRE IN INDIA (1526-1761) Part III. By S. R. SHARMA. (Karnatak Printing Press, Bombay 2.) 1935. 22cm. 689-883p. Rs. 2.  
 YOUNG INDIA, 1927-28. Vol. III. By M. K. GANDHI. (S. Ganesan, Madras.) 1935. 19cm. 1104p. Rs. 4.

SOCIAL WORK YEAR BOOK, 1935. Ed. by FRED S. HALL. (Russell Sage Foundation, New York.) 1935. 25cm. 698p. \$4.00.

INTELLIGENT MAN'S GUIDE TO INDIAN PHILOSOPHY. By MANUBHAI C. PANDYA. (Taraporevala Bombay.) 1935. 23cm. 468p. Rs. 10.

HINDU PHILOSOPHERS ON EVOLUTION. By BAL-KRISHNA. (Taraporevala, Bombay.) 1935. 23cm. 296p. Rs. 10.

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