

their appointment. They will hold office for 5 years and will not be eligible for re-appointment.

(b) The Secretary of State must determine on what matters he will consult his advisers and he may consult them individually or collectively.

(c) But so long as the Secretary of State continues to be in control of any of the members of the public services in India, he must obtain the concurrence of the majority of his advisers for any draft of rules to be made under the Act for regulating conditions of service, and for any order which he proposes to make on an appeal from any such member. In case of equality of votes, he will have a second or casting vote.

(d) On the new Constitution coming into effect, existing accounts of the Secretary of State in Council with the Bank of England will be transferred to the Secretary of State. His salary, the expenses of his department and the remuneration of his staff are placed on British estimates, except in respect of so much of the expenses of that department as is attributable to the performance of agency functions on behalf of the Federation.

---

## CHAPTER XL.

### Property, Contracts and Rights.

322. "With the institution of Provincial autonomy, and the legal delimitation of the power and authority of the Provincial Governments of the future and of the Federal Government, accompanied by the disappearance of the Secretary of State in Council as a corporation with sole final authority over all Indian expenditure, it becomes necessary that the rights and obligations of the Government in India should be apportioned between the Federal and Provincial Governments respectively, which will, consequently, have to be created juridic persons for the purpose of suing and being sued." (Evidence of Sir Samuel Hoare). The changes under the new Constitution are as follow:—

(1) All legal proceedings are in future to be taken against the Federation of India or the Provincial Governments.

(2) In pending suits, the Secretary of State is to be substituted for the "Secretary of State in Council."

(3) All property in India, which immediately before the establishment of the Federation, was vested in His Majesty for the purposes of the Government of India will continue to be vested in His Majesty but for the respective purposes of the Federal Government and the Government of the Governor's Provinces and, will, subject to the special provision which has been made in relation to Railways, be allocated between the Federal and Provincial Governments accordingly.

(4) Property vested in His Majesty for the purpose of the Government of India which are outside the Federal and Provincial spheres will not be affected by this allocation.

In other words, all property vested in the Crown, is transferred, whether it is situate in British India or in the Indian States. In the latter case, if the Crown's right arose by reason of the rights of paramountcy, then such property will not be transferred.

With regard to the jurisdiction which the Government of India now exercise over State Railways, that jurisdiction, having been acquired by the Crown through a series of treaties, *i.e.*, by the exercise of the rights of Paramountcy, is not automatically transferred to the Federal Government. If a State should not agree to the transfer of such jurisdiction to the Federation, it is open to the Crown to refuse the accession of the State into the Federation. (Evidence of Sir Samuel Hoare before the Select Committee.)

(5) Existing powers of the Secretary of State in Council,

(a) in relation to property allocated under the preceding paragraphs, and those

(b) in relation to the acquisition of property and the making of contracts for the purposes of Government which are not outside the Federal and Provincial spheres

will be transferred to and become powers of the Governor-General of the Federation and the Governors of the Provinces respectively.

(c) All contracts etc. made under the powers so transferred will be expressed to be made by the Governor-General or the Governor as the case may be, and may be executed and made in such manner and by such persons as he may direct but no personal liability will be incurred by any person making or executing such a contract.

Contracts.

(6) Rights and liabilities arising under any Statute or contract in existence at the commencement of the Act, including existing immunities from Indian income-tax in respect of interest on sterling loans issued or guaranteed by the Secretary of State in Council, will be maintained.

Any remedies which, but for the passing of the Act would have been enforceable by or against the Secretary of State in Council will, after the commencement of the Act, be enforceable against the Secretary of State.

All obligations arising under any such statute or contract which imposed a liability on the revenues of India will remain a liability on all the revenues of India whether Provincial or Federal.

(7) The Federation and every Province are under an obligation to place the Secretary of State in possession of sufficient funds to enable him to make such payments as he may have to make in respect of any liability which has to be met out of the revenues of the Federation or the Province, as the case may be.

## CHAPTER XLI.

### The Federal Court.

323. A Federal Court is an essential element in a Federal Constitution.

(1) It is, at once, the interpreter and guardian of the Constitution itself.

(2) It is a tribunal independent of Federal, Provincial and State Governments to decide on questions concerning the respective spheres of the Federal, Provincial and State Authorities.

324. The Federal Court has both original jurisdiction and appellate jurisdiction. Its original jurisdiction extends to the determination of disputes involving a matter of legal right, where the parties before it are two or more of the following parties, namely, the Federation and the Units.

**Original jurisdiction.**

The dispute involving a matter of legal right may arise out of

- (a) the interpretation of the Act itself or Orders in Council made thereunder or the determination of any rights and obligations arising thereunder,
- (b) the interpretation of Federal Laws,
- (c) the interpretation of an agreement, unless the agreement otherwise provides.