

High Courts. That is to say, the power to regulate juridical jurisdiction follows the power to regulate the substantive law to be interpreted.

347. No discussion is permitted in the Federal Legislature, or in any Provincial Legislature with respect to the conduct of a Judge of a High Court in the performance of his judicial functions.

348. The term High Court includes the Chief Court of Oudh and the Judicial Commissioners' Courts in the Central Provinces, the North West Frontier Province and Sind.

349. It will be observed that, at present, there is no separate High Court for Assam, and there will be none for Orissa, after its separation from Bihar, unless new High Courts are established. Provision has therefore been made, enabling His Majesty to constitute or reconstitute High Courts, and to extend the jurisdiction of the High Court of one Province to another Province.

350. The High Courts have no original jurisdiction in revenue matters, unless otherwise provided by an Act of the appropriate legislature concerned. A Bill or amendment making such a provision shall not be introduced except with the previous sanction of the Governor-General in his discretion, or the Governor in his discretion, as the case may be.

CHAPTER XLIII.

The Federal Railway Authority.

351. We have already seen that the Acworth Committee recommended the separation of Railway finance from general finance. It also recommended that the Railway Board should be constituted into an independent administration, preparing its own programme of work and expenditure, and carrying it into effect within the limits of its budget as approved by the Government of India and the Secretary of State, and accepted by the Legislative Assembly, although remaining an integral part of the Government machine. Since then, the establishment of a Central Controlling Agency has been engaging the attention of the Government of India.

The Government of India appointed Brigadier-General Hammond to study the question and make recommendations. His report was received early in 1932. It was considered by the Government of India and by the Consultative Committee of the Round Table Conference then sitting at

Delhi, and it was decided that " a clause be inserted in the Constitution Act that there shall be a statutory Railway Board for the administration of Railways, while the functions, composition and powers of the Board would be determined by an act of the Federal Legislature." Two members, dissenting, urged that " the Act should itself contain provisions embodying General Hammond's principal recommendations."

352. The White Paper proposals did not deal with the arrangements to be made for the administration of Railways under the Federal Government except stating the view of His Majesty's Government, *viz.*, that while the Federal Government and the Federal Legislature will necessarily exercise a general control over Railway policy, the actual control of the administration of the State Railways in India, including those worked by companies, should be placed by the Constitution Act in the hands of a statutory body so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference.

A conference was summoned in London in June and July 1933 consisting, among others, of certain members of the Central Legislature. This conference which is usually referred to as the Railway Board Committee, published a report which forms part of the records of the Joint Select Committee, on the composition, powers and functions of the new Railway Authority to be established under the Federation. The recommendations made by this committee have been substantially approved by His Majesty's Government, and provision has been made in the Act, relating to the constitution, powers and functions of the Railway Authority. They are as follow :—

(1) The executive authority of the Federation in respect of the construction, maintenance and operation of Railways in India shall be exercised by a Federal Railway Authority. It shall consist of 7 members.

(2) As to the composition of the new Railway Authority opinion was divided. The members of the Central Legislature (excepting one member) recommended that all the members should be appointed by the Federal Government. The remaining members recommended that 4 members should be appointed by the Federal Government, and 3 by the Governor-General in his discretion. The Act approves the latter suggestion and lays down that not less than three-sevenths shall be appointed by the Governor-General in his discretion.

(3) The Hindu and Moslem members suggested that out of the 7 seats, 2 should be reserved for Muslims and for Europeans. The other members did not approve of the communal principle being introduced in the constitution of the Railway Authority. In their view the members appointed should possess special knowledge of commerce, industry, agriculture and finance, or have had extensive administrative experience. The Act adopts the latter suggestion. The President is to be appointed from among the members, by the Governor-General in his discretion.

(4) The members of the Railway Authority are to hold office for 5 years and are eligible for reappointment for the same or for a shorter term. Of the first members, 3 will be appointed only for 3 years, after which they may be appointed for 5 years, so that there will not be a vacancy in the office of all the members at the same time.

(5) Any member may be removed from his office by the Governor-General in his discretion, for sufficient cause, after consultation with the Federal Government.

(6) A person who is, or has, within the preceding twelve months, been a member of any legislature, a person in the service of the Crown, and a Railway official in India will be ineligible to hold office as a member.

(7) The salary and allowances of the members will be fixed by the Governor-General in the exercise of his individual judgment, that is, in his discretion, after consultation with the Federal Government.

(8) The Railway Authority will exercise its powers through

(i) a Chief Commissioner who will be appointed by the Railway Authority subject to confirmation by the Governor-General in the exercise of his individual judgment, and who will possess experience in Railway administration, and additional Commissioners if any who will also be appointed by the Railway Authority on the recommendation of the Chief Commissioner, and who must be chosen for their experience in Railway administration, and

(ii) a Financial Commissioner who will be appointed by the Governor-General, that is, by the Federal Government. The Act does not lay down the qualifications for the Financial Commissioner, but the Railway Board Committee stated that he must possess extensive financial experience, and have served for not less than 10

years under the Crown, or have shown outstanding capacity in the conduct of the financial affairs of commercial Railway undertakings.

(9) Except in matters relating to finance, the Chief Commissioner is to have power to overrule his colleagues. In respect of financial matters the Financial Commissioner shall have a right of reference to the Railway Authority.

(10) The Chief Commissioner will carry out the duties which are, from time to time, delegated by the Railway Authority. He may delegate to subordinate officers such powers as may be approved by the Railway Authority.

(11) The Chief Commissioner may be removed by the Railway Authority with the approval of the Governor-General exercising his individual judgment. The Financial Commissioner can be removed only by the Governor-General exercising his individual judgment. The Assistant Commissioners may be removed by the Railway Authority.

(12) The Railway Authority will be responsible for the proper maintenance and the efficient administration of the Railways vested in the Crown for the purposes of Administration (including those managed by companies). The Railway Authority will also exercise control over other Railways in British India, now exercised by or on behalf of the Government.

(13) The existing rights of companies working under contracts with the Secretary of State in Council will be safeguarded. The Railway Authority will be bound to refer to the Secretary of State any matters in dispute with companies which, under the terms of the contract, are subject to the decision of the Secretary of State in Council or which may be referred to arbitration.

It will be obligatory on the Railway Authority and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator.

(14) In discharging their functions under the Act, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture, industry, commerce and the general public. They shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.

The Authority shall also give effect to any directions which the Governor-General may give in matters in respect of which the Governor-General is required to act in his discretion or to exercise his individual judgment.

(15) The Authority shall establish, maintain and control a fund known as the ' Railway fund ' ; all moneys shall be paid into that fund, and all expenses shall be defrayed out of that fund.

(16) The surplus income derived on the working of the Railways after making provision for renewals and depreciation, payment of pensions, interest, etc. is to be disposed of in such manner as may be determined by the Federal Government, and till such determination the existing arrangements will continue.

It is mentioned in the report of the Railway Board Committee that the adequacy or otherwise of the allowance for renewal and depreciation is to be decided by the Auditor-General. These funds are to be utilised only for Railway purposes, and invested by the Railway Authority subject to such conditions as the Federal Government may prescribe.

(17) The Railway Authority may make standing orders for the regulation of their business. The Chief Commissioner and the Financial Commissioner will have the right to attend any meeting of the Authority.

(18) The Governor-General exercising his individual judgment, but after consulting the Railway Authority, may make rules for the conduct of business between the Railway Authority and the Federal Government, including provisions for the transmission of information to the Federal Government or to the Governor-General.

The Act does not specify the details relating to the transaction of business between the Federal Government and the Railway Authority. The Railway Board Committee, however, made the following recommendations, and these will, no doubt, be embodied in rules :—

- (a) Revenue estimates are to be presented annually to the Federal Government which will in turn submit the same to the Federal Legislature. These estimates will not be submitted to the vote of the Legislature. If a contribution be required from general revenues, a vote will be required.
- (b) The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government may empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed.
- (c) The Minister responsible for transport and communications may, at any time, convene a special meeting of the Railway Authority for the purpose of discussing matters of Policy. He will preside at such meetings.

At any other meetings of the Authority the Federal Government will have the right to depute a person to attend and speak but not vote.

(19) Provision has been made for the audit by the Auditor-General of India of the Accounts relating to the Authority, and for the publication of annual reports.

(20) Provision has also been made for setting up a tribunal vested with exclusive jurisdiction for the decision of questions involving conflict of interests between the Railway Authority and the Ruler of a Federated State and for settling their disputes.

353. We have seen that under the existing Constitution the Railway Board was constituted under an Act of the Central Legislature, that it is subordinate to the member of the Governor General's Council in charge of Commerce and Industry, and that the Railway budget is presented to and submitted to the vote of the Legislative Assembly. Under the new scheme all this will be changed ; the Railway Authority which takes the place of the Railway Board will be an independent authority interposed between the Federal Government and the Railway executive, *viz.*, the Chief Commissioner and his colleagues and their staff. It will be subject to the control of the Federal Government and legislature only on questions of policy. In all other respects it will be completely independent. Appointments to the Railway Services will be made by the Authority, and the Federal Government cannot claim to have any say on this matter. The Railway budget will not be submitted to the vote of the Federal Legislature, and the new Railway Authority will be the non-official body, in the place of the legislature, in close touch with the working of the Railway. It will scrutinise the Railway budget. The Public Accounts Committee of the Federal Legislature will no longer have the right to scrutinise and examine Railway Accounts. Hitherto, this control, although exercised *post-mortem* has been found to be effective in the checking of abuses and extravagant and wasteful methods of the various Railway administrations. No such control can be exercised hereafter.

354. The proposals of the Railway Board Committee met with much opposition in India. The matter was discussed in the Indian Legislative Assembly and a motion carried on 22—2—1934 to the effect that "The Constitution Act should merely contain a clause requiring the establishment of a Statutory Railway Authority, and that its constitution, functions and powers, shall be subject to legislation, initial as well as amending, in the Indian Central Legislature." This resolution has been ignored,

the Railway Authority's constitution, functions and powers have been specified in the Constitution Act—the Government of India Act, 1935—and except in respect of certain minor matters specified in Schedule 8 to the Act, the provisions can be altered only by Parliament. Even with regard to the provisions in Schedule 8, they could be amended or altered only with the previous sanction of the Governor-General given in his discretion ; that is to say subject to the control of the British Government.

The White Paper proposal to set up a Railway Authority was based upon two grounds, *viz.*, (a) that it should perform its duties upon business principles ; (b) and that it should not be subject to political interference. This is sought to be effectuated by depriving the Federal Legislature and the Federal Ministry of all control save on questions of policy, and prohibiting members and ex-members (who held office during the preceding 12 months) from being eligible for appointment as members of the Railway Authority. It is difficult to see how, by vesting control in the Indian Legislature and Ministry, the Railway Authority would be prevented from performing its functions on business principles. In the second place, what is sought to be avoided, as in the case of the Reserve Bank of India, is the influence or interference of the Indian politician and not that of the British politician. Three out of seven members of the Authority as well as the President of the Authority will be appointed by the Governor-General in his discretion. If, therefore, the Governor-General appoints the President from out of the other 4 members, there will be a majority of 4 members out of 7 who will be subject to the influence of the Home Government who, in their turn, will be dominated by British vested interests, and British capitalists.

The result, therefore, is that the Indian Railways which are the property of the Government of India, built by contributions from the Indian tax-payer and so far regulated and controlled by the Indian Legislature will be taken out of that control, and placed under the control of a Statutory Authority created by an Act of the British Parliament, and composed of members, the majority of whom are amenable to British political influence.

Even assuming that the Authority will be free from British political interference, how far it is wise to free the Railway Authority which will have absolute jurisdiction over a national asset such as the Indian Railways worth several hundreds of crores, from political interference is not free from difficulty. Freedom from political interference is likely to result in the Railway Authority degenerating into a clique or bureaucratic coterie, tending to serve only one particular set of interests which need not necessarily be national interests. A Minister can, at least, be watched and exposed in the legislature by his political opponents ; whereas a

small body can take shelter under its statutory responsibility. In South Africa the Railway Board is only an advisory body, and the entire responsibility for the administration of Railways, Ports and Harbours is vested in the Minister of Transport.

The Statutory Railway Authority, just like the Reserve Bank of India, is undoubtedly a serious derogation from the transfer of financial responsibility to Indian Ministers.

CHAPTER XLIV.

The services of the Crown in India.

355. *The Civil Services* :—“ The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide. The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new ; but if, as we believe, the men who are now giving service to India still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them. This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution ; but, since in India the whole machinery of Government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed as a reflection either upon his neighbours' integrity or his own.

“ The United Kingdom no less than India owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full. But the question has another and scarcely less important aspect ; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be