

OATHS UNDER THE DOMINION CONSTITUTION

[This note was written at the request of the Prime Minister, who wanted the question of the oath to be taken under a Dominion constitution examined.]

I HAVE examined the question of the oath to be taken in connection with the Dominion constitution. The position seems to be as follows:

(1) So far as the members of the Constituent Assembly are concerned, no oath is required under the Assembly rules at present in force, nor is any oath required under the provisions of the Government of India Act of 1935 as proposed to be adapted. The proposed adaptations omit section 24 of the Act which prescribes the oath for members of the Central legislature. It is, of course, open to the Constituent Assembly itself, whenever it chooses to do so, to prescribe an oath, in such form as it thinks fit, for its members.

(2) With respect to the Dominion ministers, the draft adaptations to the Government of India Act of 1935 make no provision for any oath; but in some of the Dominions the Governor-General is directed, by royal instructions, to administer the oath of allegiance to the Dominion ministers. For example, paragraph 3 of the royal instructions issued to the Governor-General of South Africa in 1937 runs: "And we do authorise and require the Governor-General from time to time by himself, or by any other person to be authorised by him in that behalf, to administer to any person chosen as an

executive councillor the said oath or affirmation of allegiance, together with such other oath or affirmation of fidelity and office as he may think fit or may be prescribed by law." It is possible that similar instructions are contemplated for the Governor-General of the Dominion of India. If so, it is desirable that the form of the proposed oath should be discussed beforehand with the members of the Cabinet. The views of some of them are well known and it may be possible to meet them to some extent by adopting, *mutatis mutandis*, the form of the oath prescribed for the ministers of the Irish Free State in the constitution of 1922. It may be pointed out that the Irish Free State became a Dominion under the Statute of Westminster in 1931, so that the ministers in question were from that time Dominion ministers. If the Irish Free State form of oath is adapted to India, it would run somewhat as follows: "I etc., etc., do swear true faith and allegiance to the Constitution of India as by law established and that I will be faithful to His Majesty, his heirs and successors according to law".