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Sir Patrick Hannon (Birmingham, Moseley)

I hope I am in Order in raising now a matter of importance to the Christian community in India. This Clause relates to the consequences of the setting up of the new Dominions, and I want to call the attention of the Under-Secretary of State to the large Christian community in India, and to get some assurance that it will be adequately protected under the new Dominion arrangements. I would particularly call attention to the position of the Christian community in the State of Travancore which is one of the largest of the Indian States, with a population of 6 million, 2 million of whom are Christians. In that State Christianity was to be found almost as early as the Christian Church itself, and it was known as far back as A.D. The Christian community in Travancore includes both Catholics and Anglicans, and I am anxious that in the new Constitution in India the Christian community should have adequate protection in whatever administration obtains.

I want an assurance from the Under-Secretary of State that representations will be made, or appropriate instructions introduced in one of the new Constitutions, that the Christian community will be adequately safeguarded. In Travancore 70 per cent. of the schools are owned, directed, and largely under the care of Christians, and of the 320 English schools in that State, only 40 are run by the State, 72 per cent. of the 3,000 primary schools there being generally in the hands of English people and under English traditions and English principles. Small as is the Christian population, I am anxious that in the new Constitution of India every precaution should be taken by the House to protect their interests, and particularly to safeguard the schools of the Christian communities which have for so long been in India, naturally making a substantial contribution to the economic welfare of Travancore itself. I do not want to prejudice the future of good relations in India, but there is a danger that some discrimination will enter into the administration of the Indian Constitution in relation to the Christian communities. It should be widely known that the House intends to protect by every means possible Christians who are of the Anglican, Catholic or Dutch Churches, or whatever Christian community it is to which they may belong. I hope the Under-Secretary of State will be able to give some assurance to that effect.

Mr. R. A. Butler

I suggested earlier that the important question of the States should be considered under Clause 7. First, I would say that the remarks which have fallen from my hon. Friend the Member for Moseley (Sir P. Hannon) are very important, and I hope they will have the attention of the Government.

Coming to the question of the Indian States, this is a matter which has not so far been satisfactorily regulated and, in that respect, differs from many of the other aspects of the matters we have been discussing. When we look back to the elaborate arrangements offered to the States under the Government of India Act, 1935, the method by which they were to accede under Clause 6, and the various other powers included in that Act to look after their interests, we find the most sharp and radical

difference between those elaborate arrangements for safeguarding their position and fulfilling our treaties and obligations and those under the present circumstances. I trust—and I believe this to be the case—that the position of the States can be remedied if properly handled at the present time. It is in that spirit that I approach the Government, but I repeat that the position at present cannot be regarded as satisfactory, either in regard to the treaty position or the method by which the Princes have been brought into consultation with the Viceroy and his advisers, or the solution evolved in this general Constitution for the Princes who do not desire to accede to either Dominion.

I am rather encouraged that the position can still be handled—and that is certainly the spirit in which we should approach this—by one of those telegrams which some of us know so well, and which come from no less a man than Sir C. P. Ramaswami Ayer, the Diwan of Travancore, a man after my own heart, because he finds it easier to do his correspondence by telegram—obviously not a cheaper method but a very attractive one. In the last telegram I have received from him—and I have been the proud recipient of many—he refers, after a somewhat pessimistic tone in the opening, to the

"reasoned, statesmanlike utterances of Sirdah Patel the President of the All India States' Peoples Conference, who" he said,

"has partially realised certain aspects"—

which he brings to my attention—

"and are in refreshing contrast to previous bellicose statements "

If it be the case that so intelligent a Diwan of so prominent a State can refer to the "refreshing contrast to previous bellicose statements," I feel there may be some hope that the discussions between the new Dominions and their leaders and the Indian States may be conducted in a satisfactory way. Therefore, I am interested in how His Majesty's Government will address themselves to the problem of that State or States—there may very likely be more than one—which will desire to retain independence and to enter into relations with His Majesty's Government. My right hon. Friend the Member for Bromley (Mr. H. Macmillan) referred to this, in language which cannot possibly be bettered, in his speech on Second Reading, and I only wish that the assurance that we have had from the Government had been more satisfactory than it has been so far. So far, the Government have not been able to lift the curtain from their minds and to say more than the Prime Minister said:

"Take your time"—

—that is to the ruler of any State contemplating independence—

"and think again. I hope no irrevocable decision to stay out will be taken prematurely."

[\[OFFICIAL REPORT, 10th July, 1947: Vol. 439, c. 2464.\]](#)

Those are amiable sentiments, and it will naturally be convenient for many States to join one or other Dominion, and we on this side of the Committee have not desired to take sides: but I am sure there will be States which will desire to retain independence, and to establish relations with us in one form or another. What are the consequences of the Government not having evolved any plan to meet the latter contingency? On 16th August do members of the independent States, who have not seceded, become foreigners, that is, non-British? I would like the Government to answer that. Secondly, on 16th August, do independent States who have not acceded to either Dominion, or made an agreement, fall outside the

sterling area? If so, presumably they can do what they wish with their dollars without falling foul of the currency restrictions which govern them.

Those are two practical examples of the need for an early decision, but there are many other matters which need to be resolved. The Indian State which finds itself desiring to be independent after the appointed day is particularly anxious about the status of its own nationals. If they wish to travel abroad, under what passport will they travel? These are important questions which are indicative only of the general desire of these States to be given an opportunity to negotiate a future for themselves as dignified as we desire to make for the other parts of India, over which we have taken so much trouble in the discussions we have had hitherto. Hon. Members may feel that this question of treaties and States is a matter of little importance, but I must remind the Committee that the very name of Britain and of the Crown is involved in the treaties which have been concluded with these States in the past. In the case, for example, of Hyderabad, a treaty of mutual assistance was started in the 18th century, and consolidated in the 19th century. Reading from the treaty of 1800, we find the words:

"The peace, union, and friendship, so long subsisting shall be perpetual. The friends and enemies of either, shall be the friends and enemies of both."

That sort of treaty has been carried on, and was taken a stage further by the treaty of 1853, whereby the British Government undertook specific military guarantees to maintain particular bodies for the State's protection. Territory was leased in perpetuity to the British Government as a consideration for these guarantees. Then we have had a series of commercial treaties, starting with the major one in 1802. There have been others dealing with posts, telegraphs, railways and other matters. So it will be seen that these treaties, terminated under this Clause, are not just formal and interesting documents, but enshrine in their language and meaning the whole friendship which has persisted through two major wars and many anxieties, large and small—

6.15 p.m.

Mr. Wyatt

Is the right hon. Gentleman suggesting that these treaties are being terminated against the will of the States?

Mr. Butler

There is no other inference I can draw, but I shall be glad to hear the answer from the Government, and I shall be perfectly content to be contradicted by the Government. What I am saying is that there are moral ties between this country and many of these States, and it is desirable that the whole picture we have of the Indian scene should be improved by the satisfactory termination of the States problem. As I said, it can be done, and I believe that if the Government go a little further, it will be done. In the view of one diwan the future rulers of India are realising the position, and the whole basis of settlement in India is one of self-determination, and that is giving an opportunity to each Dominion to find its future most satisfactory to itself. As will be gathered from my language on other Clauses, we think this settlement is the most satisfactory that can be made under extremely difficult circumstances. What we press on the

Government—and we desire to use this Committee stage to achieve it—is to get a more satisfactory solution, and a more defined decision, for those States, few though they may be in number, who do not wish to join one or other Dominion. If the Government can help us in the light of the rather improving position in this matter, we shall feel we have done some good in putting forward these important moral considerations which lie in the power of the British Parliament which we still have time to remedy and which I hope the Government will use.

Mr. Henry Strauss (Combined English Universities)

I have never previously intervened in a discussion on India, and I would not do so now, if I did not think that the matters raised by the language of this Clause and possibly by the substance are of the greatest possible importance. I share the hope of my right hon. Friend the Member for Saffron Walden (Mr. R. A. Butler) that the Government may be able to use this Committee stage in order to get more appropriate language in this Clause and to avoid what I believe to be a great danger to the international reputation of this country. Of the importance of the States and their magnitude I shall say little, because I think the facts are very well known to both sides of the Committee. They cover a third of the area of India and have a quarter of the population. One at least of the States has a population greater than that of any British Dominion. Those are facts which I think hon. Members ought to hear in mind. The treaties which they have with this country are numerous, ancient and have been observed faithfully by the other party to them. In quite recent years those treaties have been declared inviolate and inviolable. To mention two recent declarations to that effect—they were so declared by the President of the Board of Trade in 1942 and by the former Viceroy, Lord Wavell in 1943. On those facts let us look at the language of the Clause.

"As from the appointed day ... the suzerainty of His Majesty over the Indian States lapses,"

Then come these extraordinary words:

"and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise;"

My right hon. Friend the Member for the Scottish Universities (Sir J. Anderson), dealing with this matter on Second Reading, mentioned, quite rightly, and I know that the Government would not for one moment deny it, our moral obligation. I am concerned, as I am sure the Committee will be, with our legal obligation. The only reason given from the Government Bench in justification of the words contained in this Clause was given by the Prime Minister in his opening speech in the Second Reading Debate and the right hon. and learned Gentleman the Under-Secretary of State could not, in his concluding speech, add materially to what the Prime Minister said.

What is it, in fact, that the words of this Clause do? They constitute a unilateral repudiation of international agreements, without prior discussion or prior negotiation. Do not let us think that that is unimportant. It is setting a precedent which may be most important unless, as my right hon. Friend has just suggested, the Government find it possible, at some stage during the passage of this Bill through Parliament, so to alter the Clause as to do something which is less shocking, and something which I feel

quite certain must be nearer to their real intention. In winding up for the Government in the Second Reading Debate the right hon. and learned Gentleman used language, which I think was welcome to the House, about certain discussions which are now taking place in a conference under the presidency of the Viceroy. The real complaint here is that those discussions ought not to take place under the shadow of the pressure exerted by this Clause in its present form. One does not first unilaterally repudiate a legal obligation and then discuss what is to take its place. One has discussions with one's friends before one alters the agreement. It seems to me that there is no certainty that, had there been such negotiations or discussions, agreement could not have been reached. As I say, in recent years a Member of the Government and the late Viceroy both declared these treaties to be inviolate and inviolable.

As my right hon. Friend has just pointed out, relying on these agreements, which they have so faithfully kept, the States gave up their means and their right to arrange for their own defence. They worsened their position in a number of ways if they are now to be left without the protection of those agreements. I do not intend to say one word against the fulfilment of the wish which was expressed both by the Prime Minister and by my right hon. Friend the Member for the Scottish Universities. It may well be that what the Prime Minister desires ultimately to happen to the States is what would be the most desirable result in the interests of themselves and of the world. I do not intend to argue that at present, but surely the best prospect of securing that result is by seeing that when they become free, as they will become free, and legally independent, they should discuss that with all other parties as equals, and not under pressure. What seems to me to be intolerable is that they should be put under pressure by a repudiation, by us, of our engagements.

I share the view which has been expressed on this side of the Committee and, I think, elsewhere, that the Government have the chance and, I hope, the intention of improving the language of this Clause. I feel certain that the Government do not wish to pass through Parliament a Clause which is certainly capable of the interpretation I have given. The right hon. Gentleman the Prime Minister, in dealing with this matter, explained that with the lapsing of Paramountcy all these treaties must necessarily go. As to that, I am sure that the Attorney-General would agree, that whether that is right or wrong is a matter for argument. What I think must be wrong is to declare, as we declare in the language of this Clause, for which I have been unable to find any parallel, without any suggestion of prior agreement, or even prior discussion or negotiation, that certain treaties lapse. I believe that that, as it stands, does the reputation of this country a great injury. I certainly do not, for one moment, accuse the Government of having an improper intention. I believe, if I may suggest such a thing, that the extremity of the language of this Clause has got into the Bill *per incuriam*.

I do not believe that, if sufficient attention had been paid to the matter, the Government could not have devised both language and procedure more appropriate to the great step which they are now endeavoring to take. I share many of the hopes that have been raised on both sides of the Committee and of the House, and I only raise this point, first, because I believe that the words of this Clause are actually internationally improper; and secondly, because I do not believe that the pressure which appears to be brought to bear upon the States by the language of this Clause will help the Government to bring about the very result they desire. I hope that some of these matters will receive the careful attention of the Government and their legal advisers, and that they will be able to devise some alterations in the language and substance of this Clause in order to meet the objections which I have raised.

Mr. Wyatt

I feel that the hon. and learned Member for the Combined English Universities (Mr. H. Strauss) and the right hon. Member for Saffron Walden (Mr. R. A. Butler) are suffering from a grave misapprehension if they believe that these Treaties have been unilaterally abrogated by us without prior consultation with the Indian States. It is within my recollection that just over a year ago, at the time of the Cabinet Mission, the States had it fully explained to them that in the event of the British quitting India, as was our intention, we would not be able any longer to fulfil our treaty obligations. They quite appreciated and understood that position. Some of them may not have liked it; some of them, might have liked us to remain in India indefinitely, but that we could not do. They accepted the position that the treaties would have to be abrogated, or at any rate that we should not be able to fulfil our obligations to defend them. One of the difficulties is that not all the States, by any means, have treaties with us, and the treaties in existence have, as a whole, gradually been covered in a broad way by the doctrine of paramountcy, which has roughly treated all the States on the same level and in the same respect in relation to the Government of India. The main thing is that paramountcy, which was based upon the original treaties, goes, and the treaties consequently must go too. I do not think that the States have had a "fast one" put across them in finding their treaties abrogated without consultation with them.

The only way we could safeguard their defence is by maintaining troops in India. That is not the object of this Bill. There was no other way in which such obligations could be fulfilled when we withdrew from India. If the central power is no longer held by us, the States can no longer be controlled by us nor can they be defended by us; so they must fall in with the rest of India. That position is quite clearly appreciated by the States even though, in some cases, they may not like it.

6.30 p.m.

Mr. R. A. Butler

The correspondence with the Nawab of Bhopal on 19th June, 1946, showed that he accepted the position about paramountcy but said that the final decision would have to be taken by the States when they saw the completed picture. A point I should like to add is that that refers to those who were members of the Chamber of Princes.

Mr. Wyatt

I appreciate the point which the right hon. Gentleman is making. But, surely, the final decision referred to, which must depend on the completed picture, depended on what the States themselves were to decide to do in the new India and whether they were to attempt to form a federation of their own like Rajistan, and perhaps, apply for some kind of separate Dominion status or whether they were going in with the remainder of India. That final decision was nothing to do with whether or not the treaty obligations were to be abrogated. That matter was already settled. I do not think the States could have been in any doubt about that for some 14 months.

I think it is improper to suggest at this late stage that in some curious way, the Government are suddenly coming down this afternoon and surprising the States by discontinuing all their treaty obligations. It is true

that arising out of the cessation of paramountcy, there is a desire in some of these States to be associated neither with India nor Pakistan. They wish to find for themselves a separate existence in India. I think it is most unfortunate, however, that there should be any feeling amongst those States that there is support in this country or in this Committee for them doing such a thing as attempting to be independent and on their own in India. The whole object of his Bill, as I am sure hon. Gentlemen opposite will agree, is to try to retain as far as possible the unity of India. If we encourage people like the rulers of Travancore and Hyderabad, to set up for themselves a separate rule, we are encouraging the growth of disunity in India as a whole.

The message which should go from this Committee this afternoon is one quite to the reverse. The message should be that their place is with the rest of India, and that they have been done no harm whatever by the removal of these treaty obligations. Another thing which should be made quite clear is that people in this country recognize that there may be a distinction between the wishes of the ruler of the State and the wishes of the people who live inside that State. Very frequently we hear from hon. Gentlemen opposite that the wishes of the people who live in such and such an area, wherever it may be, in Europe or in some part of India, ought to be considered. I agree with that very strongly. No one can say that the peoples of the States as a whole wish for secession from the rest of India. In fact, the people of the State from whose Prime Minister the right hon. Gentleman the Member for Saffron Walden (Mr. R. A. Butler) received a telegram this afternoon are really not pleased with the Prime Minister's declaration about independence, nor are the people of Hyderabad pleased with the declaration of the Nizam that they are to be an independent State. We should encourage the tendency towards cohesion and not towards disunity and disruption.

Mr. Molson

I am surprised that the hon. Member for Aston (Mr. Wyatt) should have taken the line he did in the concluding remarks of his speech. He is one of those who has been most anxious that we should withdraw from India and not seek to influence the people after our withdrawal. What he said might equally apply in the case of the Indian States. This Clause deals with one of the most difficult matters which arises from our withdrawal from India. I am bound to say that I hardly think that the Government could have taken any line very different from what they have done. In one important matter, this follows the recommendations of the committee which was appointed some years ago to consider the relationship between the paramount Power and the Indian Princes. They had to consider whether in the event of responsible Government being given to a British Indian Government, paramountcy could be, and should be, transferred from this country to that Government. That, of course, is a thing which conceivably might have been done. That committee came to the conclusion that it would be completely improper for paramountcy to be transferred from a Government responsible to this Parliament, to one that was responsible to British India. Therefore, I feel that in this Clause the Government have followed one of the two main recommendations of the committee which was set up to deal with the problem.

It is obvious that if, in fact, we are to withdraw from British India, it is impossible for us to carry out the obligations which we owe to the States. There were two main obligations. One was to defend the Princes against internal and external aggression. It followed logically that we were entitled to insist upon a certain standard of administration. I very much regretted that in the Debate on the Second Reading an hon. Member opposite—I rather think it was the hon. Member for Aston—said that we had not insisted upon

a certain standard of administration in the Indian States. No one will claim in that respect, or in any other respect, that a British administration has never made a mistake, that it has never overlooked any case of mis-government or inefficient government. There were two famous examples quite recently—those of Nabha and Alwar. In both these cases the Political Department of the Government of India insisted upon a certain standard of administration being maintained. It has always been the doctrine of the Political Department that so long as we guarantee the Princes, that carries with it a certain responsibility on the other side. If, then, we are to withdraw from India in August, it will neither be possible for us to give the military defence which we have given to the States in the past, nor shall we have the Political Department responsible to the Secretary of State which has insisted upon a certain standard of administration.

Therefore, I feel that probably there was nothing else to be done except to nit the knot rather boldly and to restore to the Indian States their full independence, while at the same time saying that for the future we could not continue to accept the responsibilities previously undertaken. I fully appreciate the point made by my hon. and learned Friend the Member for Combined English Universities (Mr. H. Strauss), but I think if, in the course of a major change of policy, it becomes impossible for this country to carry out its obligations, then in those circumstances it is better and more honourable to say frankly in advance that it will be impossible for us to do so and to leave it to the parties concerned to make the best arrangements that they can. Certainly, it would be far worse for us to continue obligations which we could not fully carry out.

Nearly all the speeches made today have referred to the Indian States as if they were all of one kind, but, in fact, they vary from the mighty State of Hyderabad, with 18 million inhabitants, down to small States, like Kathiawar. I would like to ask the Government to explain how they contemplate that this great range of States is going to carry on negotiations with the succession States in the case of Hyderabad and Travancore, because there we have a Ruler, with a Government, who is in a position effectively to negotiate with the succession Governments of India on all these important matters like customs and police and so on. On the other hand, in a case like Kathiawar, for example, the jurisdiction exercised by the British Resident very often has been of a very wide kind. In many of these States there has been a kind of criminal and revenue appeal from the Rulers of these States to the British official who has been responsible to the Political Department of the Government of India for the good administration of these small States. I think the Government ought to tell us what kind of arrangements have been made to enable this rather painful transition on 15th August to take place. The circumstances vary so much that I feel that we have a special responsibility in the case of those States which have been most directly under the Political Department of the Government of India, which, in turn has been more directly under the Secretary of State than most of the other Departments.

Finally, I would ask a question about personnel. What exactly is likely to happen in the case of the large number of officers of the Political Department, who, at the present time, occupy a position of special trust as between the Rulers and the people of these States and the Political Department? It would be fair neither to the States nor the Rulers, nor, I think, would it be fair to the succession Governments of India, for us merely to wind up the whole of that administration. It must be remembered also that, right down to the present time, a very much larger proportion of the personnel of the Political Department came from this country than in the case of other parts of the Indian Civil Service. A considerable number of the political officers have been drawn from the Indian Army.

I hope that the Government will be able to tell us something about the actual machinery by which this transfer is going to take place. I am not quite clear, but I take it that, as far as this Clause is concerned,



none of the provisions of the 1935 Act will continue to apply. So far as this Bill is concerned, generally speaking, in all cases where the provisions of the 1935 Act are applicable, they will continue to exist, but the Under-Secretary will remember that there are very elaborate provisions for instruments of accession by the Indian States to the Federation, and Schedule II of the 1935 Act deals with the extent to which modifications may be made. I assume, but I would like confirmation of this, that the whole question of instruments of accession by the States to the new succession Governments of India is now *tabula rasa*.

6.45 p.m.

Sir R. Glyn

I am not very clear regarding the question of the actual status of the people in the States themselves. According to the Prime Minister's own words, it will take time for them to find their position. I wonder if the Government would help us, and the people of the Indian States themselves, by giving a clear definition as to what exactly their position will be. I have assumed that they are not in the same position as Nepal, but in a quite different position. We are now told that Nepal will be represented here by an Ambassador and that our present Minister to Nepal will become an Ambassador. Quite clearly, we cannot have Ambassadors from all the Indian States here, but there must be some sort of machinery in the interval, because it is not the intention of the Government to coerce these States to join either of these two Dominions.

There are a great many British interests involved here, and I think that, if there is some clear definition as to what the period of the interregnum will be for these States to decide to join one or other of the Dominions, it would allay a great many fears. I think most people have assumed from the words which the Prime Minister used on Second Reading that it is not the intention of the Government and the Viceroy to exert any pressure at all upon the Indian States, but, at the same time, there is nothing, so far as I have been able to discover, which states what their position will be. Will they be British subjects, or Indians without attachment? I think that, if we could have a clear statement on the question of the status of the individuals in these States, it would allay a great many fears.

Mr. Rees-Williams

I agree with the hon Member for The High Peak (Mr. Molson) when he said that this was the only honourable thing to do, but I did not follow his argument from then onward. I did not understand what he was asking the Government to do in the near future. If the object of his intervention was to try to persuade the Government to take any action with regard to these States, I think that advice was definitely bad.

Mr. Molson

I was not asking for anything, but merely trying to elucidate what was the Government's intention.

Mr. Rees-Williams

I understood that the hon. Member was giving some advice on the subject to the Government, because he certainly took quite a long time to ask questions and the advice which I understood him to offer was that we should do something with regard to the States. I would say that it would be a fatal mistake to interfere in the future of these States. From now on, it is a matter between the Government of India, or of Pakistan, and the Governments of these various individual States. I am perfectly certain that they will come to an amicable agreement, and one which will suit both parties. Hon. Members opposite must not think that because we have difficulty in agreeing in the West, that they also have like difficulty in agreeing in the East. As a matter of fact, that is not so. Orientals are very well able to size these things up for themselves. They are realistic, and they come to a conclusion satisfactory to both parties. At least, that is my experience.

With regard to Subsection (1 c) of this Clause, I would like to ask my right hon. and learned Friend what it is intended to do with the large tribal area to the east of Assam, which is un-administered by anybody, and where, at the moment, there is considerable trouble. In that area, tribes are coming down from the hills and raiding the Assam territory. It has been suggested that the Government of Burma and the Government of that area should get together and try to work out a satisfactory system for handling these wild tribes. This matter does not come under the Clause because it only deals with tribal areas where there has been some jurisdiction exercisable up to this date. Can my right hon. and learned Friend say whether there has been any suggestion as to who, when this Bill has been passed, is to exercise the authority which we would have exercised had there been no such Bill?

Sir W. Smiles

My approach to this Clause is different from that of some other hon. Members who have spoken this afternoon. The Government of India are certainly very keenly concerned with what goes on in the Indian States. Only last cold weather, one very prominent Indian statesman, speaking at a commercial gathering, suggested that whereas the British commercial community paid their Income Tax and Surtax promptly, that was not the case among some of the Indian commercial community. I admit that the British commercial community have to pay because the laws in British India are just as strict with regard to the payment of Income Tax as they are in this country. But some of the principal bankers of India come from the native States, and are inclined to take a very small house in British India and a very large one in the Indian States. I am quite sure that the new Indian Governments, whether of Pakistan or India, will be very keenly alive to some commercial arrangement in the collection of Income Tax from those particular bankers, who at this moment are not subjects of British India.

The hon. Member for South Croydon (Mr. Rees-Williams) mentioned the tribes on the Eastern Frontier of India. He is perfectly right when he says that there is a large section of unadministered territory lying between British India, Tibet, Nepal, Burma and even up to China, and whereas those hill tribes—Nagas, Lushais, Abors, Mishmis-Mikirs, etc.—are administered only by British political officers, their old traditions date back to the 1830's, or so, and their customs still persist today almost as they were then. There is no doubt that no Naga boy can get married unless he brings in a head. Some of them still hop across to that unadministered territory and come back with a head. Of course, it is not always as young a specimen as one would imagine. Sometimes, they wait by a well for an octogenarian woman to come there to get water, when off comes her head, and away they go to the hills, 10 miles or more back to their own village.

I do not think that the political officer minds very much, so long as they do not collect the heads within British territory.

Among the Khasias, again, there are different customs, because they do not inherit property from father to son, but on the distaff side, from the mother or the grandmother. All those old customs have been kept alive by the British political officers. I well remember a friend of mine who took a few yards of land for a tea garden on the wrong side of the boundary. He was very heavily fined, because no one, whether a British Indian or a European, dared trespass and take land one yard over the line that belonged to any of those tribal areas.

What is going to happen to these people now? One cannot help fearing a little for them. There is no doubt that they have been protected for the last century by the British political officers. Now they are to come under a different Government altogether. It seems certain to me that with a famine in Bengal and a shortage of rice and cereals all over the East, and with no protection for those people, there will be an invasion of their land. The possibility of serious trouble cannot be evaded, because, in the Japanese retreat, thousands of rifles were left in the hills, and I am sure that they are in working order today. Only time will show what harm is going to be done. Although we are giving up our responsibility to those people, I am quite sure that if we could, by agreement either with Pakistan or India, appoint for a few years to come British political officers to look after them during the transition years, it would be for the betterment, the comfort and the health of those tribes which the hon. Member for South Croydon has just mentioned.

The Attorney-General

May I first make one or two observations about the general position? As my right hon. Friend the Prime Minister said, and as, indeed, was made clear over a year ago by the Cabinet Mission, it is the hope of His Majesty's Government that all States will, in due course, find their appropriate place within one or other of the new Dominions inside the British Commonwealth. We hope that no irrevocable decision to stay out will be taken prematurely. On the other hand, we realise that it is bound to be some time before the States will have all the information before them to enable them to take their final decision. Indeed, the Constitutions of the new Dominions will have to be altered so as to permit, and to provide for, the accession of the States, and to define the terms on which that accession may take place. The hon. Member for The High Peak (Mr. Molson), who raised the question, will recall that Part 11 of the Government of India Act, 1935, which would have enabled States to accede to a federation, has never been brought into effect, and, of course, the provisions of this Clause completely override those provisions.

7.0 p.m.

We believe that the future of the States inevitably lies in association with British India with whose territories their own are inextricably intertwined but we regard the decision which the States have to take as being their decision and we do not intend to bring any pressure of any kind to bear upon them. Mr. Jinnah has made it clear that, so far as he is concerned he would wish the States to make a free choice. Mr. Patel, speaking from the newly constituted States Department, has dismissed the idea of coercion and has invited representatives of the States to discuss with him in a friendly way the terms of their

association with British India, and he has said that he asks of them no more than accession for defence, foreign affairs and communications.

It was stated by the hon. and learned Member for the Combined English Universities (Mr. H. Strauss) that this Clause gives rise to a unilateral repudiation of the agreements. Technically that may or may not be the case, but it is inevitable, in the nature of the situation, that these agreements should be brought to an end. These agreements with the Princes were all based upon the assumption that there would be a continuance of British rule, in one form or another, in India, and, as must have been recognised at the time, they were entered into between the States and ourselves, their continuance would be wholly inconsistent with the situation which is arising now, in which India will become completely independent. The solution to the major Indian problem, which we hope we have now found, largely, if not entirely, puts it out of our power to continue these treaties in operation, and all that we are doing in this Clause is to give legal effect to a state of affairs which obviously arises from the general solution of the Indian problem.

Mr. H. Strauss

May I raise one point with the right hon. and learned Gentleman? For how long does he say this must have been clear to the States? The right hon. and learned Gentleman will recollect that in 1942 and 1943 declarations were made by the President of the Board of Trade and the late Viceroy respectively, to the effect that these treaties were inviolate and inviolable.

The Attorney-General

I think it must have been implicit in what was said, that if the time ever came when complete independence was given to India and British troops were withdrawn from India, it would be impossible for His Majesty's Government to fulfil the obligations which they had undertaken under these treaties. I would ask the Committee to say that that was obvious from the circumstances of the case.

Having said that with regard to the position generally, may I now try to take up some of the points which were raised by hon. Members opposite? The subjects of the native States were, of course, never British subjects in the full sense. Their rulers owed allegiance to the King, and they themselves possessed the status which was described in international law and, indeed, in our law as that of British protected persons—a status which was never very exactly defined either for the purposes of our own law or, still less, for the purposes of international law. However, as hon. Members have pointed out, they did travel under British passports which were issued to them as protected persons, and, no doubt, in general, in international affairs, they were treated as if they were British subjects. After the termination of paramountcy the status of a British protected person will technically go, so far as they are concerned. We have, of course, fully recognised that that gives rise to a number of difficulties, including the difficulty as to foreign representation and passports. Existing passports will continue during their currency until the date at which they will expire in the normal course, but a question will arise as to what will happen in regard to the issue of passports subsequently.

One suggestion which has been made—and all these matters are receiving careful consideration—is that, pending some final decision as to accession, one or other of the Dominions might assume, as a matter of international law, some of the duties of protection, such as the issue of passports, which have hitherto

been borne by the United Kingdom. Another suggestion, which is also under consideration, is that there should be, for the moment, a kind of standstill arrangement under which we should continue to issue passports, and, of course, His Majesty's Government in the United Kingdom are entitled to issue passports to anyone they choose, whether they are persons who enjoy the full status of a British subject or not. Solutions of that kind may be found.

As a matter of international practice, so far as one can see, and as a matter of practical international recognition, the position will probably remain very much as it is until the States have decided whether or not to accede to a Dominion, and, if they do not decide to accede to a Dominion, until the sovereign States have decided whether or not to recognise them as enjoying the status of independent States. But this, at least, can be said with certainty, that we do not propose to recognise the States as separate international entities on 15th August, when the Bill comes into operation. We hope, as I have said, that the States will associate themselves with one or other of the new Dominions in a federal or treaty relationship on fair terms, fairly and amicably negotiated. If they do that, their relations with the outside world will be with the Dominion with which they become associated.

Negotiations with the States as to the terms of their association and their accession to one or other of the Dominions are starting at Delhi on 25th July. If, as we hope, these negotiations prove to be successful, all these problems relating to the international position of the States after 15th August will automatically be solved, and I should prefer now not to discuss the hypothetical question of what our attitude might be in the event of these negotiations failing. So to do might prejudice their successful conclusion. We hope that they will be concluded successfully and that these difficult legal problems will not, therefore, arise.

Mr. H. Macmillan

I would like to thank the Attorney-General for his very clear and comprehensive statement of the legal and practical position. If I may say so, I think he a little over-simplified some of these problems in practice. I wish they were all quite as easy as he made them appear in his very nice and clear statement. The truth, of course, is that naturally—and I think this is understood by the hon. Member for Aston (Mr. Wyatt)—the passage of a Clause in a Bill of this kind is an occasion which raises great thoughts of the past, and, from a sentimental point of view—for sentiment still means something to the people of this island—it cannot be allowed to go by almost as an unimportant stage of mechanics in this Bill. More than that, I do not think it is true to say—and I certainly do not think it—that there has been a breach of faith between the British Government and the Princes. But I do think there has been something in the nature of a breach of decorum, because events have moved very fast, and it has not been possible from a practical point of view, to take all those steps which most of us would like to see taken on the occasion of what the Attorney-General has admitted to be a unilateral ending of so long a friendship and alliance.

Of course, the truth is the Attorney rather skated over the fact that, in all the prior schemes which have been before us all these years, there would have been, of course, no need for a Clause of this kind, and that is why the Viceroy and the President of the Board of Trade, as late as 1943, proclaimed once more an absolute, firm decision that the treaties and alliances between the Crown and the States would remain as before; because, of course, it was not until the decision of 1944, the 10th February decision, that we would quit India anyway, whatever happened that it became necessary, since we did not intend to retain any kind of responsibility, to denounce the treaties which we would have no methods of maintaining. In the 1935 Act, for instance, there were great reserve powers to the Viceroy. Therefore, these treaties

would not have been improper to maintain—under the schemes it would not have been necessary—and that is why, in fact, they were retained by the Viceroy and the Cabinet until the decision was made. It has been clear and should have been clear to us that since that decision, of course, a Clause of this kind would have to be introduced into any Bill. That decision settled the matter.

There are one or two points I should like still to press upon His Majesty's Government. I see the Prime Minister is here. My right hon. and hon. Friends and I are very glad that the Government—as I ventured to say on Second Reading and I repeat it—have resisted the claim so long made in India, that paramountcy must automatically pass to the successor Government of British India; and I think it is a very hopeful augury for any arrangements to be made between the new Dominions and the States—as we all hope there will be—that the leaders of Indian thought, in the very statements which the Attorney-General has quoted, have taken such a different attitude from that which has been current in India for many years past; because it is on that basis of equality that agreeable arrangements may well be made for an association of the States with one or other of the two Dominions. I think His Majesty's Government are to be congratulated on having resisted that claim; and, if I may be allowed to say so, the leaders of Indian opinion are also to be congratulated on having thought fit not to revive that past attitude, but to enter these negotiations on a basis of equality.

Secondly, of course, these difficulties of the States—I must repeat it—arise from the character of this scheme in particular, because it is the partition of India not upon a geographical basis, not upon an economical basis—

Mr. Wyatt

Will the right hon. Gentleman allow me? I do think he has got that quite wrong. There was always the intention of this Government to leave India entirely, and have no responsibility there, and as long ago as the Cabinet Mission's arrival in India it was foreseen that some such Clause as this would have to be inserted.

Mr. Macmillan

If that is so, I do not understand why the Government—the Viceroy and the President of the Board of Trade—made this declaration. If the President of the Board of Trade repudiates this, I understand the change of view. I say that it is only since the last declaration that this point arose. I am not trying to make a party point of it. But I say that is why in the last year or 18 months this has been a great practical matter. Secondly, it is only since the decision to have the partition of India and not a united India, a British India, that the problem has become so very pressing, and I think the hon. Gentleman will admit that that decision was only taken last Easter—a few weeks ago. Why is that? There was the problem of the States to get into relations with a united British India—or ex-British India, as we must call it—as was contemplated under the Act of 1935; but now that India is to be partitioned on a purely religious basis, it does very much add to the difficulties of the States; because, as everyone knows, they have so long tried—and naturally, from the very character of their position—to avoid the raising of the religious division, and have been on the whole very successful—more successful than British India—in avoiding that great division. Therefore, that puts a fresh difficulty in their way.

7.15 p.m.

I welcome very much what the Attorney General —repeating what the Prime Minister said— that the Government would like to see the States associate themselves through negotiation with one or other of the great Dominions that are coming into being, and that no pressure of any kind will be put on them; and, indeed, that any pressure that may exist, physical or moral, will be removed, so far as His Majesty's Government are responsible up to 15th August. I refer once more to the troops at Secunderabad. There is no greater pressure than to keep troops in somebody else's territory. But I also hope there is not to be a kind of negative pressure. The Attorney-General rather contemplated there could be no alternative—I do not think he meant to give that passage the weight he seemed to, in the second part of his remarks—for a large State—of course, we are speaking of the great States, not small "landlord properties"—no alternative but to join one or other of the Dominions, or to be a free and independent country, completely unattached to any organisation at all. I think and hope that that is not so.

I quite see that what was once talked of as the Dominion of "Rajistan" is not contemplated now, but I hope we shall not end this long connection and get this nominal freedom by saying to the States that, unless they join one or other of the Dominions, they are to have no relations with His Majesty's Government. I hope that is not so because—I will not go into detail, and I do not think it would help the position to do so—it would be easy to see that there could be a relation between a very large State and His Majesty's Government in some form or another. And so I hope that there will not be any negative pressure, that if they should fail to reach proper arrangements there will be no hope for them at all, except to be cast into the kind of limbo where they have no friends or alliances or regularised relations with a powerful body. I should hope that they could in some form or another—for we have a very flexible Constitution—remain in connection with the British Commonwealth of Nations.

I think that that is a point of importance. I will not pursue it. These negotiations will continue, and they will go through a quite long period, because there is first the Constitution-making, of course, and then there is that period in which the States will be in touch with the Dominion Parliaments, and then there is question of the interim arrangements. It is a practical and sensible arrangement to carry on as they were and hope for the best. I still think that the phrase that the Prime Minister used—I know he thought it out carefully—and the rather clear-cut phrase of the Attorney sounded a little too impartial. I want impartiality, but I do not want it to lean so far as almost to force the States into a partition they may not wish to take. I should like it to be absolutely open, and that is, I think, what all Members of this Committee would like. Obviously, if in this changed mood—and it is a very changed mood, as indicated by the quotations from the Indian leaders which we must welcome: a very changed mood from that of the last 20 years' agitation —if in this changed mood, this atmosphere, there can be arrangements by which the States range themselves into one or other of the great groups, obviously that must be to the general advantage of India as a whole.

I trust that the negotiations will be successful, but I would still like to feel a little warmer attitude than that shown up to now, and possibly—I do not wish to do any harm; goodness knows, this problem is difficult enough—a message might go out of this Committee which would give the right balance from both sides of the Committee of the good will and wishes of the British people as a whole towards this delicate and difficult problem. I have not spoken on the question of the tribal area, to which some of my hon. Friends wish to address themselves. I thought it more convenient to deal with the problem of the great States, and to leave the other questions to my hon. Friends.

Mr. Nicholson

I want: to leave the question of the States about which, as far as I am concerned, my right hon. Friend has said the last word, and to take advantage of the presence of the Prime Minister by reverting for a few minutes to the question with which this interesting Debate was opened by my hon. Friend the Member for Moseley (Sir P. Hannon), who spoke about the position of the Christians in India. I was wondering how we could bring that question within the scope of this Clause, but I think we can. My own view, of course, and that of the Christian community in India, is that their future lies in India, and that they must identify themselves with India. I hope that whoever replies for the Government will make a reference to future treaties to be negotiated, or some other means, so that we do indicate to the Governments of the new Dominions our intense interest in our co-religionists in India, and our devout hope that freedom of religion will be dealt with in the new Constitution.

My hon. Friend spoke particularly of the State of Travancore. I know the Christian community in India has shown some anxiety over a certain bias—I do not use the word "persecution"—which has been shown against Christians in Travancore; surprisingly so, because it is a singularly enlightened State. I rise now to express this hope, and to impress upon the Prime Minister my keen desire that we should indicate to the Dominion Governments the very bad effect it would have upon relations with this country if it were to be shown that there was not freedom of religion under the new dispensation.

Mr. Sorensen (Leyton, West)

Has the hon. Member any complaint regarding the treatment of Christians outside Travancore?

Mr. Nicholson

Yes, I have, but I will not go into that, because I do not want to make bad blood.

Earl Winterton

I also wish to take advantage of the presence of the Prime Minister, and to revert to another matter of immense importance in this Bill. I cannot imagine anything more pregnant with good or evil for the future of India than the question of the tribal areas, and the general position of the North-West Provinces. Those hon. Members like myself—and, I think, the Prime Minister; certainly the Under-Secretary—who have visited those areas in the past know that this great red, raw territory is more a part of Asia—one might almost say it is more a part of the Middle East—than of India. Immediately across the great river one gets into the North-West Frontier tribal territory, and the impression is that of meeting with an entirely different type of person, and an entirely different mentality. In fact, when I was there in 1922 I almost thought I was back in the first desert war, because of the terrain, and the intense and fervent belief of the inhabitants—a belief which must be honoured for its fervency in the great cause of Islam.

The reference which Clause 7 makes to this matter is as follows, in Subsection (1, c):

"there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of his Majesty existing at that



date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise."

I cannot quarrel with those words, but I do want to ask one or two questions which I think are in Order on this Clause. If they are not they can be answered on Clause 11, on which they would certainly be in Order. The first observation is almost, to use a vulgarism, a bromide for hon. Members on both sides of the Committee. The territory in question is one of the greatest historic battle terrains and strategic points of the whole world. Throughout the history of Asia and of the relationship between Britain and Asia, no point, not even the Alps, can be found which has been the scene of such a great historic battle. I would urge that it does not jeopardise but rather safeguards world peace to ensure that such a territory is properly defended. If it is left in a vacuum it is bound to be a danger point to the peace of the world. Therefore, I hope that His Majesty's Government and the Pakistan Government will act in the closest consultation to secure if necessary —one hopes the contingency will not arise —the joint use of British and Commonwealth troops in any major emergency. I put those views on record, and I think no sensible person could dispute them. It may not be possible for the Government to give an answer, but I hope these views will reach the ears of my friend, Mr. Jinnah, and I have a feeling that he would be very friendly to them.

At the same time—and this is a point of equal importance—it is necessary to draw a very clear line of demarcation between such a major emergency and ordinary measures to secure law and order, including the dispersing of tribal forays, for it would be in the interests of neither Britain nor Pakistan to use British troops in the latter case; that is to say, if British troops were used for what may be described as an ordinary purpose in that part of the world, in securing law and order. Perhaps I might here make a personal reference, having made certain visits there; few people have had better opportunity of seeing conditions there. The maintenance of law and order, unfortunately, always depends upon the use of troops not in the ultimate but in the immediate background—that fortified area which, incidentally, affords an instance of the admirable strategy adopted by the Government in India, who realised that at the time. If these British troops were to be used for the ordinary maintenance of law and order, as opposed to—I use a very euphemistic term which everyone will understand—a major emergency, I think it would affront an important major constitutional principle. His Majesty's Forces in Great Britain—by which I mean the British Army and Air Force; not necessarily stationed in Great Britain—are the responsibility of the Secretary of State for War, who is answerable to this Committee for their welfare, and so on. It would be a grave departure from constitutional principles for them to be at the disposal of any Government in the Empire, however friendly, except in a major emergency.

The Prime Minister

*indicated assent.*

*7.30 p.m.*

Earl Winterton

I am glad to see that I have the assent of the Prime Minister, because I do not think there has ever been any case in which they have been so used. Therefore, I put forward these two propositions. I do not necessarily press for an immediate answer. It may be better to give an answer at a later stage, or it may not be desirable to answer them clearly or definitely. However, I think it is useful to put them on record.

I am certain that they will not be unpalatable to Pakistan, and I hope that they will not be unpalatable to His Majesty's Government.

It used to be said in the old days that if you wanted to have an absolutely bare House of Commons, you had only to discuss Indian affairs. Some intelligent person computed, in the 1890's, that the average number of Members present, when Indian affairs were discussed, was about 15. Slightly more interest is taken in the subject today. I am not complaining of the smallness of the attendance on this occasion, but I do want to make this observation: whether we like it or not, whether we are Socialists, Tories or Independents, this question of the defence of the North-West frontier and of the tribal areas is the very fibre of this Bill, and without an adequate defence system for the tribal areas and for the North-West and North-East Frontiers, the whole structure of this Bill and everything we have been talking about on Second Reading, during the Committee stage, and everything we shall talk about on Third Reading will be splinters and match-wood. Vast possibilities for good or evil—I hope that they are for good—exist in the strategic areas in the world, and I need only ask everyone to look at the districts surrounding the North-East and North-West Frontiers.

Sir P. Hannon

I rise to put to the Under-Secretary of State a question which I have put to the Government before. I am making no complaint to the Under-Secretary of State. Earlier on, I submitted certain considerations affecting the safety and security of the Christian population in India, and particularly in Travancore, but the Attorney-General made no reference to what I said, in making a very comprehensive speech dealing with the points raised during the Debate. I am seeking clarification from the Under-Secretary of State. Will he give an assurance that some representations will be made by His Majesty's Government in regard to that particular State. and, indeed, in regard to India generally, that Christian safety and security will be preserved, and that there will be the fullest freedom for them to practise and carry on with their educational work, and so on?

The Prime Minister

With regard to the point made by the hon. Member for Moseley (Sir P. Hannon), clearly all these matters of religious toleration pass now to the Dominion Governments. They have, in the Constituent Assembly in India, passed resolutions which lay down the security of religion, and I hope that it will be carried out. It is quite impossible for us, as I am sure he realizes, to put in a Statute anything that in any way restricts the position of a Dominion Government in that matter. In the same way, it is not possible to do it with the State of Travancore, of which, I think, something like one-third of the population are Christians.

Sir P. Hannon

Exactly one-third.

The Prime Minister

It has been a very enlightened State, and we all hope that it will set a great example of toleration in this matter. I should like now to deal with one point made by the right hon. Gentleman the Member for Bromley (Mr. H. Macmillan). It is quite clear, I think, that as soon as one gets into the role of talking about Dominion status, the question of what should happen to the Princes is bound to come up. It was quite clear that paramountcy would have to go when we ceased to rule India. There have been conversations going on for a long time with the Chamber of Princes, and with individual Princes, on these matters. I wish that agreement with the Princes had been come to rather earlier. I do not want to go into details, but the right hon. Gentleman knows that at times there have been differences of opinion amongst the Princes themselves. It is awfully difficult when you talk of Princes, as the right hon. Gentleman said, to remember that in one case there is a huge country with 18 million, and in another case there is a Prince with only a few acres, where absolutely different considerations apply.

I do not think it would be wise for me to add anything to what I said on Second Reading, which was to the effect that we did not want to bring pressure either way. I wanted to keep a level course, because negotiations are going forward with, I believe, good hopes of success. The hon. and gallant Member for Down (Sir W. Smiles) raised a point about troops on the Eastern Frontier, and spoke of the Nagas and so forth, whom I have had much pleasure in visiting. In these unadministered tracts, we hope that agreement will be made, and we must all be anxious about these people, who are extremely primitive. I hope that full advantage will be taken of the very experienced officials we have working in that area. The suggestion put forward that there might be some talks with the Government of Burma is a very wise one, because some of these tribes live on both sides of the boundary line.

The noble Lord the Member for Horsham (Earl Winterton) raised the important matter of the North-West Frontier and its defence. He knows as well as I do that the defence of the North-West Frontier has been entrusted to the Indian troops for a very long time; and, of course, there have always been forces in reserve. This is a matter that is very much in the minds of the Members of both successor Governments, and there is a Joint Defence Council to consider it. I should not like to go further than to say that the Government would be perfectly willing to enter into discussions with the successor Government on any matter of common defence. I do not think I had better say more than that. I am sure everyone understands how vital to the whole of India and the East is the preservation of peace on the North-West Frontier.

Earl Winterton

I do not press for an answer to my second point, but will the right hon. Gentleman give a general assurance that it would be wrong, in normal circumstances, for British troops to be used for maintaining law and order unless asked for by the Secretary of State.

The Prime Minister

I agree. We have always laid that down with regard to other Dominions. British troops would be under command here. With regard to Secunderabad, I understand that discussions are now proceeding on that very question.

Brigadier Low

I was very glad to hear what the Prime Minister said about the North-West Frontier. I noticed that at the end of his remarks, he referred to the Joint Defence Council, which has just been set up. The Prime Minister said, on Second Reading, that this Council dealt only with administrative matters, and that the Commander-in-Chief whom I imagine to be the executive authority, would have no responsibility for law and order and no operational control. I wonder whether such matters as the defence of the North-West Frontier ought not to come within the purview of such a Council, at any rate during the transition period.

The Prime Minister

I did not want to suggest anything, except that we have a Defence Council which will obviously bring up these questions; we can, therefore, expect that they will be discussed. I did not want to suggest that everything had been laid down already.

Brigadier Low

I am much obliged for that answer. The other point I want to refer to is in connection with the Clause itself, which refers to the words "or other like matters appear." I am always suspicious when I see the words "other like matters" in any Bill, but I am particularly suspicious of them in this Bill, which cannot be construed by any court of law in any country. I would like some information as to what these words mean. I am in doubt as to whether they might not be construed as indicating that troops might be left in the particular area. When dealing with the States such a construction might not be placed on the words, but when dealing with the tribal areas it might.

Mr. Wilson Harris (Cambridge University)

I desire elucidation on one point. I listened to the Attorney-General's explanation of the position of the States if they join one of the Dominions. I can conceive that a State might desire to be identified fully with Pakistan or India if it was convinced that the Dominion would remain permanently within the British Commonwealth. But what would be the position of a State which identified itself with a Dominion, if that Dominion subsequently decided to secede from the Commonwealth? Would the State be carried, against its will, outside the orbit of the Commonwealth?

Sir S. Reed

I would like to echo the words spoken by my right hon. Friend the Member for Bromley (Mr. H. Macmillan) a few moments ago, when he asked for a little more warmth to be enthused into our discussion about future relations with the Indian States. It has often been said that India is a land of regrets. I have never been quite clear about what was meant by it. If it is said that it means regret at going into India, I do not

think that anybody who went to India and tried to identify himself with the country and her peoples has regretted it. If the regret is at leaving India, then that is indeed a regret on the part of those who have tried to serve and love that land. That is a painful thought at this last stage of what I would call the fulfilment of our pledge to India, which is bringing with it partition in a united India, partition in two of the Provinces of India, and now the severance of our historic treaty relations with the Indian States.

Those relations go back to the days of Hyder Ali and Tipu Sultan. I do not know which is the oldest, but I have delved many times into the Malcolm Treaties which arrested the march of the Mahrattas into Rajputana. Those treaties lapsed through the unilateral repudiation of paramountcy. We regret it; on the other hand this day ought to have been foreseen, on the day we accepted the principle of self-government for India, so long ago as 1917. Now that these contractual relations are lapsing, we must not let them go without some reiteration of the immense debt we owe to the Princes and States of India, and to the part they have played in the governance of India.

7.45 p.m.

There are many Members of this House who, speaking seriously, are rather prone to recall the autocratic tone of the Indian States, and to cry that they do not stand for democracy. I am getting tired of the word "democracy," because I am reminded of what the Roman Catholic Archbishop said in the newspapers this morning, that "democracy" is a word which can be used to cover up the most hideous and oppressive forms of autocracy. I remember one of the leading Indian Princes once saying to me: "Who is the more responsible in India—the Indian ruling Prince, or the Viceroy?" Answering his own question, he said, It is the Indian ruling Prince. The Viceroy passes his five years and goes. The Indian Prince remains the trustee for his State, his House and his successors." We must not forget the great debt we owe to the States through two great wars, when they were pillars of the Commonwealth and Empire, nor that they took part in half a dozen minor campaigns in China and in Somaliland, and elsewhere when their resources and support were given, without stint or hesitation, to the Commonwealth Nor must we forget the testimony borne by many independent visitors to India—that on passing the borders they found the people happier than in British Territories.

Now paramountcy is passing; we look forward to the future. Those who suggest that we should have special contractual relations with the States outside the ambit of one or both of the two new Dominions should surely inform us what the nature of those contractual relations should be, and how they can be discharged. However that may be, I do not think we should let the occasion pass without expressing our warmest thanks and gratitude to the Princes and the States which have had this intimate association with us for a century and a half, and paying a tribute to those whose hospitality, generosity, and support have always been extended in unstinted measure to the British Commonwealth and Empire. Although our contractual relations may pass with time, we shall always keep our memories green and be grateful to them from the very depths of our hearts.

The Attorney-General

I do not rise to follow the striking and eloquent speech of the hon. Member for Aylesbury (Sir S. Reed), but to answer two points specifically put to me. First, I would remind the hon and gallant Member for North Blackpool (Brigadier Low) that the proviso to Clause 7 (I) does not contemplate military arrangements of any kind. The words "other like matters" have to be construed, *ejusdem generis*, as the

lawyers say, in relation to the words coming before, and they contemplate economic and financial matters. Civil aviation may be one, roads may be another, but certainly matters of a military nature are not contemplated.

Now I come to the second point, raised by the hon. Member for Cambridge University (Mr. Wilson Harris). The position of States which have acceded to a Dominion which subsequently decides to secede from the British Commonwealth is a matter on which it would be impossible to make a definite statement now, since it depends entirely on the terms on which the State has acceded to the Dominion. That will be a matter dependent in part on the Constitution of the Dominion concerned, and in part on any agreement that (may be negotiated between it and a particular State. I do not doubt that a State, in negotiating terms on which it could accede to the Dominion, may make it a condition that the accession should be conditional on the Dominion concerned remaining within the Commonwealth.

Colonel Gomme-Duncan

There are two points to which I would like to refer. One was raised by the noble Lord in the matter of the tribal areas and the defence of the North-West Frontier of India. The Prime Minister gave an interesting account of what was going on, but I feel that emphasis should be laid on this colossal problem of the defence of the North-West Frontier of India. I am perfectly convinced—if I may say so with great modesty because of a good deal of experience which I have had—that the Pakistan Army on whom the defence of the North-West Frontier will lie under the set-up in the Bill, unless other negotiations to the contrary are brought about, will, by itself, be quite unable to defend the North-West Frontier of India. Therefore, we have to realise that something else has to be put in the place of what is at present the British Army in India if that Frontier is to be properly defended. A great danger on the North-West Frontier in relation to Pakistan are the co-religionists of the tribes of the Frontier. There lies a danger which I hope will not be overlooked. The title of this Clause is:

"Consequences of the setting up of the new Dominions"

I wish that these were all the consequences mentioned in this Clause, but I feel that, whereas we have spoken about the Indian States and the tribal areas, and made clear that transit, communications and so on with these places will be maintained, we ought to have some proviso at the end of this Clause stating precisely that agreements and treaties existing at present with countries out with India—Afghanistan, Nepal, French India and Portuguese India—which will be still in existence after this Bill goes through, will not be affected by this Bill without prior negotiations with the States and interests concerned. I feel that should be added in some way or another to make it clear that this Bill will not automatically wipe out anything which we have agreed to do with any of these States.

Question put, and agreed to. Clause ordered to stand part of the Bill.

**Motion made, and Question proposed, "That the Clause stand part of the Bill."**

Mr. H. Macmillan

This Clause is rather difficult to follow, and I think that the Committee would be grateful if we could have a further explanation from the Attorney-General as to its precise effect.

## The Attorney-General

This is an important Clause making provision in the main for the transitional period while the Constituent Assemblies are still working and before the Legislatures have had time to consider whether or to what extent they wish to modify the general law and government of the Dominions. In the meantime, law and government must be carried on, and the broad scheme of the Bill as expressed in this Clause and Clause 18 is to provide for a temporary Constitution and maintenance of the general law until such time as they may be altered. Subsection (1) gives the necessary legislative power to a Constituent Assembly and attracts the provisions of Clause 6. Subsection (2) deals with the constitutional position until and unless some other provision is made by the Constituent Assembly, and it provides, broadly speaking, that the Government of each of the Dominions is to be carried on as if the Government of India Act, 1935, was as nearly as may be applied to each of them separately. I say "as nearly as may be" because in practice the Act will require very considerable modification. The provisions of the Act which involve central control, directed from London, go.

Similarly, the provisions in the Act as to the precise constitution of the different legislative assemblies go. There are, on the other hand, a number of matters in which the Act 1935 may continue in operation unless and until the Constituent Assemblies decide to alter them. In substance—I do not say in every detail because it would be impossible and I think not useful to attempt to go through every Section of the Act at this stage—the existing powers of the constitution of the Provincial Legislatures will remain in being, and so may the powers, as distinct from the constitution, of the Central Legislature. What I have in mind particularly there is that what are called the "legislative lists" set out in Schedule 7 of the 1935 Act, which allocate certain subjects as being for the Central Legislature and assign others to the Provincial ones, would continue until one or other of the Constituent Assemblies decides to alter them. So should also the provision with regard to the constitution and jurisdiction of the High Courts. This will go on and the courts will continue to function until a Constituent Assembly or Legislature decides to alter them. Some of the modifications and adaptations of the 1935 Act are obvious and some are not. The more obvious ones are the subject of express provision in Subsection (2) of the Clause, and, for the rest, the necessary modifications will be made by order of the Governor-General under the powers which are vested in the Governor-General under the subsequent Clauses of the Bill. That is the broad purpose of this Clause, and one has to read it in relation to the next Clause and in relation to Clause 18.

Mr. Molson

There are two or three questions which I would like the Attorney-General to answer. He has said that the provisions of the 1935 Act will continue in force in so far as they are applicable to the new circumstances. He has mentioned a number of respects in which, owing to the partition of India and also the partition of the Provinces, a number of the provisions of the Act will cease to be applicable. There may be a difference of opinion as to what has ceased to apply. Is there any court through which application can be made in order to determine a question of that kind, or is it to be determined by some other machinery? The right hon. and learned Gentleman referred to the High Courts he did not say anything about the Federal Court. Under the 1935 Act, the Federal Court was set up for three purposes, one of the most important being to define the Constitution. That, I take it, will not continue to apply. Suppose there is a perfectly genuine doubt as to the extent to which some provision of the 1935 Act is by implication being made inapplicable as a result of changes that have taken place, how is it to be decided what the true view is?

8.0 p.m.

The other question I should like to ask is with regard to Subsection (2, *d*) which says:

"as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure. and no Provincial Act shall be disallowed by His Majesty there under"

The real purpose of that provision under the Act of 1935 was to enable the Central Government to exercise a certain jurisdiction over the Provincial Legislature and, in particular, if I remember aright, to make certain there was not a conflict of jurisdiction between two adjoining Provinces. One recognises that under this new legislation, instead of His Majesty disallowing legislation on the advice of the Secretary of State for India, it would be done by the Governor-General. If paragraph (*d*) were not incorporated the natural development would be that the Government of India under the new Bill would be able to prevent a Provincial Legislature from legislating in a way which a Dominion Government disapproved, and the Minister of the Dominion Government would recommend the Governor-General to disallow that Bill. I do not understand why that rather important piece of machinery is being done away with under this Bill. It is true we are going to have two federations instead of one, but I should have thought that it was as important as ever to enable the Government of the Dominions to exercise some measure of control over the Provincial Legislatures.

The Attorney-General

I will deal with the two points raised by the hon. Member for The High Peak (Mr Molson) in the order in which he raised them the existing Federal Court cannot function in future but some corresponding court may arise under Clause 6 (2) unless the Dominion or Governor-General decides otherwise. That will be a matter for the Dominion concerned.

Mr.H. Maemillan

Under both Dominions?

The Attorney-General

Under the new constitution for both Dominions, but a Federal Court is established—.

Mr. Macmillan

For both?

The Attorney-General

—for each Dominion separately—the existing Federal Court established under the 1935 Act will not continue to function. The High Court will continue to operate in each Dominion until they have had an opportunity of deciding to what extent any particular provision of the 1935 Act in these regards should be altered.

Mr. Molson

I am much obliged to the right hon. and learned Gentleman for saying that the Federal Court will cease to exist. I do not think that that is actually provided for in this Bill.



The Attorney-General

No.

Mr. Molson

If the right hon. and learned Gentleman would permit me, I would like to develop this argument. He has made an extremely important statement, and it is an example of the way important changes are being made in the Constitution of India which are not explicit in the words of this enabling Act but are implicit because it is assumed that these provisions cease to be valid on the principle *cessante ratione, cessat lex*. If that is so, it is vitally important that from the beginning either a court or a tribunal or the Governor-General shall be able to decide what are the ultimate consequences of the provisions of this Bill.

The Attorney-General

I quite agree with the hon. Member, but the Governor-General has those powers under the succeeding Clause. He has an order-making right to make whatever adaptation he thinks necessary in the 1935 Act. The existing Federal Court, of course, cannot function because the circumstances in respect of which it was functioning under the 1935 Act will not continue. New Federal Courts may be set up for each Dominion. As far as the High Court is concerned, I was saying that it might have occasion incidentally to consider whether any particular provisions of the 1935 Act are still in operation providing that the Governor-General had not already dealt with the matter by Order in Council, the normal way in which these matters will be dealt with and will be made clear, and those orders made by the Governor-General will be made under the succeeding Clause.

The second point raised by the hon. Member was in regard to the provision in Clause 8 (2, d) as to reservation. That corresponds in the case of the Provincial Legislature with the provisions under Clause 6 (3) with regard to the reservation of laws passed by the Central Legislature. That was dealing with reservation until His Majesty's pleasure was known and that was a form of reservation which enabled the Governor-General to withhold assent to a Bill until His Majesty could be advised by the Government of the United Kingdom about the matter. That provision would have been a wholly inappropriate one to retain and obviously would have involved a derogation from the sovereignty we are now giving to the Dominions. No doubt, the Governors-General will provide immediately, as the eventual Constitution will have to provide, that there will be some sort of power of that kind vested in the Governors-General or provided for in the provisions of the new Constitution, but that will be a matter for the new Constituent Assembly.

Question put, and agreed to.

Clause ordered to stand part of the Bill.