

Legislative (1895) Department.

ORDINARY MS.

G.O., No. 89

Dated 12th Sept. 1895

3

[Despatch Abstract.]

EXECUTIVE MEMBERS OF COUNCIL WHEN ACTING AS A PART OF THE
LEGISLATIVE COUNCIL.

Recording letter from the Government of India forwarding
copy of despatch from the Right Honourable the Secretary of State
in regard to the position of the --.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

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Order no 89 Lxnd 12-9-95
his Records
called LD
" J.P.

India Office.
 London, 26th June 1895.

Legislative,
 No. 21.

To His Excellency The Right Honourable The Governor General
 of India in Council,

MY LORD,

I have received and considered in Council your Excellency's Letter of 2nd of January last, enclosing a report of the proceedings of your Council assembled for the purpose of making Laws and Regulations on the 27th December 1894.

2. I observe that your Excellency thought it advisable, on that occasion, to state your view with reference to the position of members of your Executive Council, when acting as a part of the Legislative Council, and of the relations between your Excellency in Council and the authorities in this country in regard to such measures as may be laid by your Government before the Legislative Council.

3. As this subject has recently attracted some attention, and as such precedents as exist have not resulted in the establishment of any clear understanding on the question, I desire to record my concurrence in the opinions expressed by your Excellency, and to take this opportunity of stating the decision at which, after a full consideration of the matter, Her Majesty's Government have arrived.

4. The Duke of Argyll, as Secretary of State, laid down very clearly, as your Excellency is no doubt aware, the principles on which members of the Government of India were, in the opinion of Her Majesty's Government, bound to act. On the 24th November 1870 he wrote in the following terms to the Earl of Mayo, with reference to a measure which had, by His Grace's instructions, been introduced :

"It cannot be denied that some theoretical inconveniences are inseparably connected with the working of such a machinery of government as that through which the empire of India is ruled from Home. In practice these inconveniences may be, and have actually been, reduced to a minimum by mutual respect on the part of those who discharge various functions and exercise different powers in a divided and complex system of administration. But the risk of serious embarrassment would become much greater than hitherto it has been found to be, if a clear understanding were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is, that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under parliamentary enactment, in India itself.

* * * * *

"The Imperial Government cannot indeed insist on all the members of the Governor General's Council, when assembled for legislative purposes, voting for any measure which may be proposed, because on such occasions some members are present who are not members of the Government, and are not official servants of the Crown. But the Act which added these members to the Council for a particular purpose made no change in the relations which subsist between the Imperial Government and its own executive officers. That

Government must hold in its hands the ultimate power of requiring the Governor General to introduce a measure, and of requiring also all the members of his Government to vote for it.

"I need hardly say that I am speaking on a question of abstract right, not on a question of ordinary procedure. But it is the question of abstract right which I understand to be raised in your reply to my Despatch of 18th March 1869. As regards ordinary procedure, it is only needful to bear in mind where the seat of ultimate authority is placed in order to secure on both sides that forbearance and moderation without which no political constitution can be worked with smoothness and success."

Again, on the 31st May 1876, the Marquess of Salisbury, on a similar occasion, wrote to the Governor General as follows:—

"It is not open to question that Her Majesty's Government are as much responsible to Parliament for the Government of India as they are for any of the Crown Colonies of the Empire. It may even be said that the responsibility is more definite, in that the powers conferred are, in the case of India, armed with a more emphatic sanction."

"It necessarily follows that the control exercised by Her Majesty's Government over financial policy must be effective also. They cannot, of course, defend in debate measures of which they do not approve; nor can they disavow all concern in them, and throw the responsibility of them upon the distant Government of India."

"Full legal powers having been entrusted to Her Majesty's Government, Parliament would expect that care should be taken that no policy should be pursued which Her Majesty's Government were unable to defend. If the control they possess were to be in any respect less than complete, the power of Parliament over Indian questions would be necessarily annulled. If the Government were at liberty to assume the attitude of bystanders, and to refer the House of Commons for explanations to the Governor General in Council upon any policy that was assailed, there would practically be no one whom the House could call to account, or through whom effect could be given to its decisions. In scrutinizing the control exercised over the Government of India by Her Majesty's Government, and the grounds for maintaining that control, it must be borne in mind that the Superintending authority of Parliament is the reason and the measure of the authority exercised by the responsible Ministers of the Crown; and that, if the one power is limited, the other must be limited at the same time."

5. These were the views entertained from twenty to twenty-five years ago, and I am not aware that anything has since occurred to modify them. But I wish it to be understood that the observations which I now make refer to members of the Executive Council exclusively.

6. Your Excellency is aware that in this country each minister shares a collective responsibility with all other members of the Government for anything of importance that is done in any branch of the public business. The Government is a unit, its views are laid before the sovereign and before Parliament as the views of one man, and its principal characteristic is united and indivisible responsibility; if a difference of opinion should arise, the minister or ministers whose sentiments do not prevail must either accept the responsibility of supporting and promoting measures which individually they do not approve, or tender their resignations. This principle, though not established until comparatively recent times, is now universally recognised as the only basis on which the government of the country can be carried on.

7. Her Majesty's Government fully recognize the important differences which exist between the position of the Home Government and that of the Government of India. But these differences are not in their opinion, such as

to affect the necessity for unity of action; and they consider that the principle to which I have referred must be held to govern the action of all members of your Executive Council.

8. It should be understood that this principle, which guides the Imperial Cabinet, applies equally to administrative and to legislative action; if in either case a difference has arisen, members of the Government of India are bound, after recording their opinions, if they think fit to do so, for the information of the Secretary of State in the manner prescribed by the Act, either to act with the Government or to place their resignations in the hands of the Viceroy. It is, moreover, immaterial for the present purpose what may be the nature of the considerations which have determined the Government of India to introduce a particular measure. In any case, the policy adopted is the policy of the Government as a whole, and, as such, must be accepted and promoted by all who decide to remain members of that Government.

9. I will only add that it must henceforward be assumed that this necessity for united action on the part of the Government of India is recognized by all who accept or retain office as members of the Executive Council. There can, therefore, be no necessity for special instructions relating to any particular measure, since the principle to which I have referred applies equally to all measures introduced by the Governor General in Council.

I have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servant,

HENRY H. FOWLER.

No. 1429.

COPY forwarded to the Home Department for information and such action as may be considered necessary.

LEGISLATIVE DEPARTMENT,
The 31st July 1895.

By order,
J. M. MACPHERSON,
Offg. Secy. to the Government of India,
Legislative Department.

No.

COPY forwarded to the Government of Madras Bombay for information.

By order,

HOME DEPARTMENT,
PUBLIC;
Simla, the August 1895.

L. M. THORNTON,
Deputy Secy. to the Government of India.

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