

Confidential]

[No 41 of 1889.]

Report on Canarese Newspapers for the
Fortnight ending the 15th June. 1889.

Contents.

I Foreign Politics.

1 The subsidy to the Amir.

II Home Administration

(a) Police.

(b) Courts.

(c) Jails.

(d) Education

2 Moral training in Schools

(e) Local and Municipal.

(f) Land Revenue and Settlement.

(g) Forests.

(h) Railways.

(i) Public Works.

(j) Salt.

(k) General.

III Legislation.

IV Native States

3. Danger to Mysore from foreigners.

V Prospects of Crops and Condition of People.

4 The Condition of India.

VI Miscellaneous.

5. The Congressmen

6 The affairs in Burmah.

[7]

ORDINARY, MS.

Public
DEPARTMENT.

G.O., DATED 12. 7. 89

No. 606.

Confidential No 113
1889

When given for copying

[Despatch Abstract.]

Governa and Members of

Council Recording papers

regarding the persons of the

Governa to act in dependence

of the Council and in respect

to matters of patronage.

READ AGAIN ORDER OF GOVERNMENT, DATED
188, No. MISCELLANEOUS.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL (not paged).

15 Copies made

Spare Copies — 15

H. S. the Govt — 1

Under number — 2.

H. S. the Government — (full) 4.

Under number (full) 11.

Under number 1

Under number 10

Under number 10

Under number 10

Public

his 20.12/4/eq. 606.

Recorded.

12 July

7/7

N.B.—

- A = Copy in full.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.

621. The selection of persons to fill these commands we direct to be made by our President, when he may deem it necessary to take them from their Corps and to appoint them especially for that purpose, and we cannot doubt that our President will be disposed to give due weight and attention to any opinions and observations which our Commander-in-Chief may think it his duty to make upon the occasion.

622. In like manner we direct that all Regulations for the disposition, cantonment and distribution of the Company's troops shall in future be framed by our Commander-in-Chief and submitted to, and brought forward by, our Governor who will, of course, give all due consideration to such suggestions as the Commander-in-Chief may think it is duty to offer on those subjects.

3rd.—The third division comprises all other offices not above enumerated whether connected with the army or a civil nature in which it may be proposed to employ Military men.

623. The selection and recommendation of these for the approbation of our Council there can be no doubt ought to vest in our President, and we therefore direct that the selections and recommendations of proper persons to fill all those situations shall be made by him, recommending it to him however to make such previous communication to our Commander-in-Chief of the person selected as he may conceive necessary in order, where it can conveniently be avoided, to prevent any detriment to the Military service by abstracting persons from their Military duty whose exertions therein may be material to the discipline of our army; but the propriety of persevering in the selections he may have made under this head and submitting them for the approbation of our Council, notwithstanding any objections which may be suggested to him by our Commander-in-Chief, we leave exclusively to the judgment of our Governor, relying upon his zeal and attention to all branches of the public service that in making such selections he will take due care that they shall be made upon the principle of obtaining the greatest general advantage to the State with the least possible inconvenience to any particular department.

624. We have laid down the above rules as applicable to times of peace when our armies are in cantonment. In times of war, or when the army shall be in the field, it will rest with our President in Council to entrust such further powers to the Commander-in-Chief upon the subject of Military patronage and the movements of the army as they may think the public service shall require.

625. It is to be observed that by the above regulations we do not mean to prohibit our Commander-in-Chief from making such selections and recommendations as he shall think necessary for our service in the event of our President declining or, after the customary time, of bringing forward propositions of this sort delaying to make the recommendations above specified in the mode hereinbefore prescribed, neither is it our intention to preclude our Military commander or the other Members of our Council from urging such objections as they may at any time conscientiously think of importance to the public welfare against the recommendations of our Governor, repeating however our expectations that our Governor will pay the utmost attention to the selections of our Commander-in-Chief in his recommendation of persons to fill the several offices enumerated under the first division and that our Council will show the utmost deference in all cases to the recommendations made by our President.

626. We trust the above rules will be found sufficiently clear to regulate your future conduct upon the subject of Military patronage and Military regulation and to prevent the recurrence of discussions upon matters of this sort, which we cannot but consider it to be of the utmost importance to the welfare and due administration of our Government in future to avoid.

Extract from a Despatch from the Hon'ble Court of Directors, to the Government of Madras, dated 13th October 1847, No. 18.

Para. 2. The exception to which we allude relates to the instructions conveyed to you in our letter of the 22nd July (No. 9) 1846 in the Revenue Department respecting the selection of individuals to fill vacant offices. Your President expresses a desire to be informed for future guidance of the precise interpretation to be put on these words viz., "to give effect to such nominations (by the Governor)" they must be made by "the Governor in Council and must therefore be concurred in by a majority but that concurrence ought not to be withheld except in cases in which any Member of Council may be of opinion that there are specific objections to the persons selected." The exception intended by us will apply to any case where specific objections on public grounds may be considered to exist to the individual selected and nominated by the Governor. The concurrence of the Members of Council to the nominations of the Governor ought not to be withheld unless such specific objections are considered to be of material importance on the ground of unfitness for the particular office.

612. The principle itself, though generally applicable to all our Governments in India, appears to us more peculiarly to attach upon our subordinate presidencies from the circumstance of their respective Governors standing in greater need of every adventitious support to enable them more effectually to conduct the important affairs of the Government committed to their charge.

613. The Acts of Parliament by the enlarged powers granted to our Governors and by giving precedence of consideration to all such matters and questions as shall be proposed by them, together with our orders of the 12th April 1786, afford sufficient intimation of the opinion of the legislature on the general question, and of our anxiety that the utmost deference should be paid to the recommendations of our President upon the subject of patronage.

614. The single exception which has hitherto been made by our orders to this general position has been in favor of our Commander-in-Chief, by giving him in some cases the power of selection and originating recommendations of Military men to fill certain Military situations, and the principle upon which this exception has been made is that our Commander-in-Chief should be thereby the better enabled to promote the discipline of the army for the good order and efficiency of which he is individually responsible to our Government abroad, to us and to the British nation.

615. Such Military situations therefore appeared to us immediately necessary for this purpose it was our intention should be filled at the recommendation of our Commander-in-Chief, but it never was in our contemplation to extend his powers of patronage beyond the immediate principle which gave them birth or to admit of his embracing all the patronage of the several departments connected with the army as claimed by Lieutenant-General Stuart's Minute of the 5th June 1804. We continue to acknowledge the principles upon which our former orders upon the subject of Military patronage are founded. For the purpose however of giving greater efficacy to our Civil Government and affording additional respect and increase of dignity to our President as also for the very desirable object of preventing by the most precise regulation any future controversy or reference home upon this point, we shall without violating the principle alter the mode of execution, and make some changes in the details of our former orders as applicable to your presidency by which your conduct on the subject of Military patronage and Military regulation is in future to be governed. For these purposes we direct that all recommendations for all Military as well as Civil situations, together with the proposal of all regulations respecting the disposition, cantonment, and distribution of the Company's troops, shall in times of peace in the first instance, if he shall think fit, be made by our President.

616. But in order to preserve the principle of our former orders upon the subject by giving our Commander-in-Chief such weight in the appointment of Military men to such situations of a pure and unmixed Military nature as we conceive to be necessary to enable him to further the efficient discipline of the army, we have divided all Military officers into certain classes, and we direct our Governor, in the exercise of all such recommendations as he shall think fit to make to our Council of a Military nature, strictly to adhere to the regulations we are about to lay down for his conduct concerning each of those classes.

617. The division which we have thought it expedient to make is first of all such offices as are purely and exclusively of a Military nature, filled by Military men, on whom the direct conduct and discipline of the army must immediately depend.

618. Under this head we place the staff of the army and those attached to it, together with all Regimental situations and the Medical offices upon the Military establishment.

619. Enumerating the different officers under this head they are as follows.

620. The Adjutant-General and Quartermaster-General, and their Assistants; the Judge Advocate-General and Deputy Judge Advocates, Brigade-Majors, Fort and Town Majors (excepting those of Fort St. George and Black Town), Conductors of Stores, Translators to Military Commands, Regimental and Military Medical officers. These offices as being exclusively of a Military nature appear to us to have been properly placed, by our former orders, at the selection of our Commander-in-Chief. We therefore direct that the selection of proper persons to fill those situations shall still remain with that officer. We desire however that he will propose the names of such persons as he may think eligible to our President for his recommendation and we rely upon our President that he will pay the utmost attention to the selection thus made of persons to fill the above offices and that he will recommend the persons thus selected by the Commander-in-Chief to our Council for appointment, unless real grounds of objection to the individuals shall occur, which he will state to the Board, along with the Commander-in-Chief's recommendation.

2nd.—The second division which we have made is of such offices which, though of a Military nature and immediately connected with the discipline of the Army, are likewise or may become of a mixed nature, connected with the internal tranquillity of the country, or otherwise involving in them the discharge of political duties.

Under this head are the commands of all Divisions, Districts, Forts and Stations.

6. If, as explicitly declared by the Court of Directors, the Governor when not in Council is "vested with none of the powers conferred by the Legislature," it follows *a fortiori* that he cannot under such circumstances exercise the highest of all powers or that of over-ruling the views of his Council and acting upon his single will. Indeed, it is clear from a perusal of Act 33, Geo. III, Cap. 52, Sec. 47, that that Section contemplates all the proceedings specified in it—the interchange of written Minutes between the Members of Government, and the recording of his final Minute by the Governor—taking place at the Council Board. By a later Act indeed—39 and 40, Cap. 79, Sec. 12—it is provided that these several acts need not take place in Council when the Governor is at the Presidency; but in no other case is such latitude allowed, and it would evidently be inconsistent with the whole tenor of that Section.

7. I have offered the above remarks upon the general question, and not with any especial reference to its bearing upon the particular subject now before us, or the assessment of the Trichinopoly District. I gather, however, from His Excellency's last Minute that he is so much opposed to the immediate adoption of the settlement approved by myself and Mr. Maltby, that he would be prepared, if necessary, to return to the Presidency for the purpose of putting a formal veto upon our proceedings in the manner prescribed by the Act. I certainly would not wish to subject His Excellency to the inconvenience of such a journey, not to mention other obvious objections, as it seems to me, to such a course. And if I am to be given to understand that His Excellency would, if necessary, unquestionably resume his seat in Council for the above special purpose, I would accept the will for the deed, and would withdraw from all further consideration of the question and leave it to His Excellency to take his own course in respect to it on his own responsibility.

II

Extracts from Military letters from the East India Company, dated London, the 30th July 1806, and 31st August 1810, to the Governor in Council at Fort St. George.

606. We have perused with attention the argument contained in the several minutes of our Governor and the different Members of our Council at Fort St. George in the course of the discussion upon Military Patronage referred to in your Military letter of the 16th October 1804.

607. It is always a subject of regret to us when matters of this delicate nature become the topics of controversy in our presidencies abroad, nevertheless the ability displayed throughout the whole of the late discussions, the able arguments used by each of the Members of our Council in support of his opinions, and the temper and moderation with which the whole debate seems to have been conducted are entitled to our approbation.

608. We are fully impressed with the importance of an immediate and well-defined decision being given by us upon this subject, and of our opinions for your future guidance being clearly marked out and made known to you, we have not therefore hesitated to take the whole matter into our most serious consideration to investigate the principles upon which our former orders upon the subject of Military patronage were framed and even to correct those orders where they have seemed to require correction in order to render them more precise and better adapted to the political situation of your presidency.

609. The following paragraphs contain the result of our opinions and it being our intention to prevent the possible recurrence of controversies of this nature from again engrossing the time and attention of your Government by giving the most exact directions upon this subject we desire that the rules herein laid down may be fully considered by our Governor, our Commander-in-Chief and the other Members of our Council, and that the same may in future be observed with the utmost strictness.

610. As a general position it is our opinion that all patronage of every kind should practically as well as theoretically vest in our President, subject however to the liberal control of our Council.

611. The political importance which we attach to the elevation of our Governor to the highest point of consideration to which consistently with the constitution of Government he can be raised in the eyes of every subordinate department, together with the evils that would flow from vesting the distribution of patronage in many hands, is the foundation of this opinion.

612. The principle itself, though generally applicable to all our Governments in India, appears to us more peculiarly to attach upon our subordinate presidencies from the circumstance of their respective Governors standing in greater need of every adventitious support to enable them more effectually to conduct the important affairs of the Government committed to their charge.

613. The Acts of Parliament by the enlarged powers granted to our Governors and by giving precedence of consideration to all such matters and questions as shall be proposed by them, together with our orders of the 12th April 1786, afford sufficient intimation of the opinion of the legislature on the general question, and of our anxiety that the utmost deference should be paid to the recommendations of our President upon the subject of patronage.

614. The single exception which has hitherto been made by our orders to this general position has been in favor of our Commander-in-Chief, by giving him in some cases the power of selection and originating recommendations of Military men to fill certain Military situations, and the principle upon which this exception has been made is that our Commander-in-Chief should be thereby the better enabled to promote the discipline of the army for the good order and efficiency of which he is individually responsible to our Government abroad, to us and to the British nation.

615. Such Military situations therefore appeared to us immediately necessary for this purpose it was our intention should be filled at the recommendation of our Commander-in-Chief, but it never was in our contemplation to extend his powers of patronage beyond the immediate principle which gave them birth or to admit of his embracing all the patronage of the several departments connected with the army as claimed by Lieutenant-General Stuart's Minute of the 5th June 1804. We continue to acknowledge the principles upon which our former orders upon the subject of Military patronage are founded. For the purpose however of giving greater efficacy to our Civil Government and affording additional respect and increase of dignity to our President as also for the very desirable object of preventing by the most precise regulation any future controversy or reference home upon this point, we shall without violating the principle alter the mode of execution, and make some changes in the details of our former orders as applicable to your presidency by which your conduct on the subject of Military patronage and Military regulation is in future to be governed. For these purposes we direct that all recommendations for all Military as well as Civil situations, together with the proposal of all regulations respecting the disposition, cantonment, and distribution of the Company's troops, shall in times of peace in the first instance, if he shall think fit, be made by our President.

616. But in order to preserve the principle of our former orders upon the subject by giving our Commander-in-Chief such weight in the appointment of Military men to such situations of a pure and unmixed Military nature as we conceive to be necessary to enable him to further the efficient discipline of the army, we have divided all Military officers into certain classes, and we direct our Governor, in the exercise of all such recommendations as he shall think fit to make to our Council of a Military nature, strictly to adhere to the regulations we are about to lay down for his conduct concerning each of those classes.

617. The division which we have thought it expedient to make is first of all such offices as are purely and exclusively of a Military nature, filled by Military men, on whom the direct conduct and discipline of the army must immediately depend.

618. Under this head we place the staff of the army and those attached to it, together with all Regimental situations and the Medical offices upon the Military establishment.

619. Enumerating the different officers under this head they are as follows.

620. The Adjutant-General and Quartermaster-General, and their Assistants; the Judge Advocate-General and Deputy Judge Advocates, Brigade-Majors, Fort and Town Majors (excepting those of Fort St. George and Black Town), Conductors of Stores, Translators to Military Commands, Regimental and Military Medical officers. These offices as being exclusively of a Military nature appear to us to have been properly placed, by our former orders, at the selection of our Commander-in-Chief. We therefore direct that the selection of proper persons to fill those situations shall still remain with that officer. We desire however that he will propose the names of such persons as he may think eligible to our President for his recommendation and we rely upon our President that he will pay the utmost attention to the selection thus made of persons to fill the above offices and that he will recommend the persons thus selected by the Commander-in-Chief to our Council for appointment, unless real grounds of objection to the individuals shall occur, which he will state to the Board, along with the Commander-in-Chief's recommendation.

2nd.—The second division which we have made is of such offices which, though of a Military nature and immediately connected with the discipline of the Army, are likewise or may become of a mixed nature, connected with the internal tranquillity of the country, or otherwise involving in them the discharge of political duties.

Under this head are the commands of all Divisions, Districts, Forts and Stations.

aware of, existed in so carrying on the Government. And perhaps this consideration, as well as that of many difficulties in modifying the relative powers of the absent Governor and those of the Council, may have dissuaded any attempts to introduce such an act of Parliament as I have above adverted to. I have also had occasion officially to advise Government itself that its acts passed by the Members of Council alone, without any previous reference to the absent Governor (which circumstances rendered impracticable in the instance in question) was passed by the proper and legitimate course, and that all measures of Government were to be passed by the Members in Council during the absence of the Governor himself.

14. I have felt myself bound to discuss this latter topic somewhat the more at large, because it is clear, from the tenor of the communication made to me from Government, that its objection is not so much to my having advised personally and privately with the Governor for the time being, whether actual or officiating, as to my having so advised with the mere Senior Member of Council, whom it is intimated I had improperly recognized as officiating in the capacity of the Honorable the Governor in Council. At the same time—upon such a mere matter of form, personal to such Member, as I look upon, and still must consider, for the reasons I have stated, this topic to have been—I cannot plead guilty of any substantial impropriety in my answering Mr. Chamier's note in the manner I did. I humbly conceive that the suggestion I made to him was of no other public concern than as regarded the regularity of an official Warrant—that it was right that some designation of capacity should be affixed to that Gentleman's signature—and that the capacity that I suggested was that which he had at that time filled.

Extract from Minute by the President, Sir William Denison, dated July 1863.

4. I submit these remarks for the consideration of the Members of Council; but it must be understood that I distinctly refuse my assent to the adoption of the Trichinopoly Assessment in the form now submitted; and should the Members of Council refuse to allow of a revision which will bring the Report into harmony with the instructions which ought to have been the guide of the Revenue Survey Officers, the whole question must be referred to the Secretary of State.

Extract from Minute by the Honourable Mr. Maltby, dated 31st July 1863.

1. The Revenue Secretary has forwarded to me a Minute by the President on the orders passed by Government regarding the revision of the assessment of the Trichinopoly District. In this Minute, the President, who is absent from his Council on a tour, objects to the order being carried out, and declares that the whole question must be referred to the Secretary of State.

2. When passing their orders the Government prepared a Despatch forwarding their Proceedings and all the papers to the Secretary of State, and that authority will thus be made acquainted with the whole question. But the important point remains whether the President can meanwhile stop the action of the Government, when he is absent from his Council, and when a majority of its Members differ from his views. The President can only, it appears to me, take such a step by acting formally under Section 47 of 33, Geo. III, Cap. 52, should he consider that the authority thereby vested in the head of the Government is applicable on the present occasion, and that the urgency of the case calls upon him to assume the responsibility of exercising that authority. Otherwise the order of Government must, in my opinion, be carried out, since the injury which would arise to the public interests from further delay was a main reason why the Government took the subject into early consideration.

Extract from Minute by the President, Sir William Denison, dated 6th August 1863.

1. Mr. Maltby has in his last Minute, dated 31st July 1863, passed in review a portion only of the Proceedings connected with the Trichinopoly Assessment, and as it appears that his views are altogether opposed to mine, not only as to the policy of the proposed measures, but also as to the meaning of the instructions issued by the Government, and commented on and modified by the Secretary of State, I propose to review in this Minute, as briefly as possible, the Proceedings of the Government with reference to this assessment; to explain clearly my views with relation to the mode in which the operations of the Survey should have been conducted, and to contrast them with those of Mr. Maltby, and, finally, to explain the grounds upon which I feel thoroughly justified in acting in accordance with the powers given to me by the Acts of Parliament 33, Geo. III, Cap. 52, and 39 and 40, Geo. III, Cap. 79.

* * *

19. I come now to the question as to the power of the Governor to adopt or to suspend measures, about which the Members of his Council may differ with him in opinion.

20. Section 47 of 33, Geo. III, Cap. 52, and Section 12 of 39 and 40, Geo. III, Cap. 79, are very clear as to the power of the Governor. The only point upon which there might be a doubt is, whether the presence of the Governor in the Council Chamber is absolutely necessary when the opinions, in writing be it remembered, of him and his Counsellors are exchanged.

21. The enactments in question do not seem to contemplate the absence of the Governor from the Council except under the contingency of sickness. They do not provide for the case in which his absence may be necessary or advisable for purposes connected with the good government of the country, a case which my own somewhat wide experience has shown to be by no means infrequent. To such a case the rules laid down can only be applied by analogy, which would seem to indicate that the exchange of Minutes might be carried out through the medium of the post, instead of in person. Upon this matter it would seem to be advisable that a reference should be made to the Secretary of State.

22. In the present instance, however, it is not of much importance. I can, with no greater inconvenience than that of travelling about 200 miles to Madras and 200 miles back, be present in the Council Chamber, and comply literally with the directions of the Act of Parliament. I would, however, vain hope that the Members of Council, looking to the fact that a reference to the Secretary of State would involve a delay of at least three months, while by the course proposed by me the whole matter might be brought before the Government again in a revised form in three weeks, will not press the adoption of the scheme of assessment described in the Order of 1st August 1863, and then compel me to adopt a course which, whether it result in the adoption of my views or of theirs, can only be productive of delay and inconvenience.

Extract from Minute by the Honorable Mr. Maltby, dated 12th August 1863.

20. I now come to the second branch of the subject, and as an individual Member of the Government, must entirely disclaim any unnecessary assumption of the full powers of Government by the Members present in Council during the absence of his Excellency on his tours. It appears to me clear that a Governor absent from his Council has no legal powers; but it has been my aim to carry out the instructions of the Home authorities given in their Legislative Despatch of 5th November 1846, No. 3, by diminishing as far as possible the inconvenience caused by these temporary separations and carrying on "the administration of public affairs with harmony and efficiency." On this point I refer with confidence to the arrangements agreed to in Council for the transaction of public business on His Excellency's leaving the Presidency in the past and present year, and to the mode in which even unimportant papers have been continually forwarded to His Excellency when he was known to be interested in the subject.

21. But on the other hand it must be remembered that the Legislature has specially provided for the due efficiency of the administration during a Governor's absence, whether Act 39 and 40, Geo. III, Cap. 79, Sec. 12. "owing to indisposition or any other cause whatsoever." The Government is carried on "in Council," the Senior Member present presiding with such full powers and authorities as the Governor would have had if present. A grave responsibility, unsought for, but not to be relinquished or evaded is thus thrown upon the Members of Council, and they are bound to exercise the powers thus vested in them whenever in their judgment the public interests call upon them to act promptly.

22. This was the case on the present occasion. The early settlement of the Trichinopoly District was of great importance after the long delay which had occurred, and another year would have been lost unless early orders were issued. Adverting also to the arrangements agreed upon for the conduct of business during his Excellency's absence, (Government Order, 13th June 1863, No. 664,) while I was of opinion that this matter did not admit of delay, I considered that it involved "no new principle," as it formed part of a general scheme which had been decided upon after long deliberation and had been carried out among other places in the two Taluks of South Arcot, which adjoin the Trichinopoly District. The Members present in Council, therefore, passed orders disposing of the question, and prepared a Despatch to the Secretary of State reporting their proceedings for approval.

23. On receiving these papers from the Revenue Secretary, His Excellency has announced his intention of stopping the execution of this Order, under the powers vested in him by Act 33, Geo. III, Cap. 52, Section 47, and in the event of any question arising whether he can exercise those powers when absent from his Council, he notifies his being prepared to return to the Presidency for the purpose. Under these circumstances I abstain, for important public considerations, from proposing the issue of the order passed in Council, and will await the result of the course which His Excellency proposes to take at the end of his last Minute, but on the understanding that I am not responsible for any delay which thus occurs. Had I seen any prospect of this course leading to a satisfactory conclusion, I would have readily acquiesced in it, but I fear that its chief result must be the postponement of the introduction of a revised assessment in Trichinopoly for another year.

Extract from Minute by the Honorable Mr. Pycroft, dated 13th August 1863.

3. The Minutes of His Excellency and Mr. Maltby further discuss the questions as to the powers of a Governor, under Acts 33, Geo. III, Cap. 52, Secs. 47 and 39, 40, Geo. III, Cap. 79, Sec. 12, when absent from the seat of Government, and whether he can at such a time act under the former of those enactments. As these questions have been raised, I would state shortly my views in regard to them. They are evidently questions on

which no uncertainty should exist, nor do I think that any does exist; these questions having, as it seems to me, been conclusively settled in the papers noted in the margin.

Public Despatch Court of Directors, 16th May 1832, No. 27 of 1832, paragraph 14.
Despatch, Legislative Dept., 2nd July 1841, and opinions of Attorney and Solicitor General and other eminent Lawyers therewith transmitted for the guidance of Government.
Acts XXXIX, XL, Geo. III, Cap. 79, Sec. 12.

Public Despatch Court of Directors, 18th March 1846, No. 2, paragraph 2.
Letter to Government from Advocate General, Mr. G. Norton, 8th January 1847, paragraphs 2, 8, 10, 11, 12, 13 and 14.

4. These papers inform us, that—Despatch Court of Directors, 16th May 1832—"Whereas the Legislature has conferred the powers of Government expressly upon the 'Governor in Council,' the Governor when not in Council is vested with none of the powers so conferred,"—that (Despatch 2nd July 1841 and accompanying opinion) during his absence from the Presidency the Government is to be conducted by the remaining Members of Government then present, according to the provisions of Act 39 and 40, Geo. III, Cap. 79, Sec. 12—that is, that the

Senior Member of Council for the time being is to preside at all Councils "In such manner and with such full powers and authorities as the Governor might and would have had, in case such Governor was himself actually present at such Council," and that the acts and proceedings of the Council thus sitting and carrying on the administration of the country at Madras, do not require the assent or approval of the Governor to give them legal validity.

5. The above I conceive to be the purely legal view of the case, as taken nearly *verbatim* from the documents on record in the Government Office, and according to the views of the Court of Directors and the first Lawyers of the day. I am at the same time fully aware of the advantage to be derived from a Governor's tours in the provinces under his Government, and that it is the duty of the Members of Government during the absence of its head to communicate with him freely on all important questions, and, as far as they can without sacrificing their own judgment and principles, to defer to his wishes and opinions; and from a pretty long acquaintance with the proceedings of Government, I think that I may affirm that the Members of Government have not failed in this duty. But cases may arise when Members of Government cannot surrender their opinions without a dereliction of duty, and in which they have no course, but to act according to the Statute 39 and 40, Geo. III, Cap. 79, Sec. 12, expressly communicated to them under the first legal authorities for their guidance.

6. If, as explicitly declared by the Court of Directors, the Governor when not in Council is "vested with none of the powers conferred by the Legislature," it follows *a fortiori* that he cannot under such circumstances exercise the highest of all powers or that of over-ruling the views of his Council, and acting upon his single will. Indeed, it is clear from a perusal of Act 33, Geo. III, Cap. 52, Sec. 47, that that Section contemplates all the proceedings specified in it—the interchange of written Minutes between the Members of Government, and the recording of his final Minute by the Governor—taking place at the Council Board. By a later Act, indeed—39 and 40, Cap. 79, Sec. 12—it is provided that these several acts need not take place in Council when the Governor is at the Presidency; but in no other case is such latitude allowed, and it would evidently be inconsistent with the whole tenor of that Section.

7. I have offered the above remarks upon the general question, and not with any especial reference to its bearing upon the particular subject now before us, or the assessment of the Trichinopoly District. I gather, however, from His Excellency's last Minute that he is so much opposed to the immediate adoption of the settlement approved by myself and Mr. Maltby, that he would be prepared, if necessary, to return to the Presidency for the purpose of putting a formal veto upon our proceedings in the manner prescribed by the Act. I certainly would not wish to subject His Excellency to the inconvenience of such a journey, not to mention other obvious objections, as it seems to me, to such a course. And if I am to be given to understand that His Excellency would, if necessary, unquestionably resume his seat in Council for the above special purpose, I would accept the will for the deed, and would withdraw from all further consideration of the question and leave it to His Excellency to take his own course in respect to it on his own responsibility.

II

Extracts from Military letters from the East India Company, dated London, the 30th July 1806, and 31st August 1810, to the Governor in Council at Fort St. George.

606. We have perused with attention the argument contained in the several minutes of our Governor and the different Members of our Council at Fort St. George in the course of the discussion upon Military Patronage referred to in your Military letter of the 16th October 1804.

607. It is always a subject of regret to us when matters of this delicate nature become the topics of controversy in our presidencies abroad, nevertheless the ability displayed throughout the whole of the late discussions, the able arguments used by each of the Members of our Council in support of his opinions, and the temper and moderation with which the whole debate seems to have been conducted are entitled to our approbation.

608. We are fully impressed with the importance of an immediate and well-defined decision being given by us upon this subject, and of our opinions for your future guidance being clearly marked out and made known to you, we have not therefore hesitated to take the whole matter into our most serious consideration to investigate the principles upon which our former orders upon the subject of Military patronage were framed and again to correct those orders where they have seemed to require correction in order to render them more precise and better adapted to the political situation of your presidency.

609. The following paragraphs contain the result of our opinions and it being our intention to prevent the possible recurrence of controversies of this nature from again engrossing the time and attention of your Government by giving the most exact directions upon this subject we desire that the rules herein laid down may be fully considered by our Governor, our Commander-in-Chief and the other Members of our Council, and that the same may in future be observed with the utmost strictness.

610. As a general position it is our opinion that all patronage of every kind should *practically as well as theoretically* vest in our President, subject however to the liberal control of our Council.

611. The political importance which we attach to the elevation of our Governor to the highest point of consideration to which consistently with the constitution of Government he can be raised in the eyes of every subordinate department, together with the evils that would flow from vesting the distribution of patronage in many hands, is the foundation of this opinion.

Presidency and the Council Board, or the powers or position of the senior Member during such absence, were in question or under controversy. I have never been consulted, directly or indirectly, by Government or by any party in it, upon such topics. I imagined, and I still imagine, as I shall presently further shew, that upon these points the law was settled, notorious, and clear. I, therefore, looked upon the reference as involving no matter of doubtful or disputed law upon which I was desired to offer a legal opinion—but a mere matter of form with respect to the insertion or otherwise of the designation or capacity in which Mr. Chamier was to sign a document, where no doubt was made in any quarter as to that capacity in which he was legally acting—and involving a question of no further concernment, than as respected the formal regularity of the Warrant, and the personal act of Mr. Chamier himself.

10. Upon this point I have to represent to the consideration of Government that during the existence of all the previous Governments in this Presidency which I have had the honor to serve, it has been customary to delegate the powers of the Governors in Council to the Senior Member left acting in Council at the presidency, during the absence of the Governor himself at such a distance as to preclude him from attending the Council, or from acting personally according to the provisions of Section 12 of 39th and 40th, Geo. III, Cap. 79—and that, if no such formal delegation took place, yet those powers are necessarily assumed by the Senior Member as by course of law. I remember a serious controversy once arising as to what party—the Commander-in-Chief, or the Senior *Civil* Member—should be considered as entitled or bound to exercise such powers, but I never heard of any being questioned or debated that the Senior Member should so preside and exercise the functions of the Governor in Council (as indeed the above quoted statute expressly provides) and that the functions and powers of the actual Governor were, in point of law, suspended until his return to the Presidency or Council Board.

11. If I may be not, upon the recent departure of the Most Noble the Governor for Ootacamund, a Proclamation was made that the Government would be carried on in the name of "the Honorable the Governor in Council"—which designation does not, of course, apply to the Most Noble the Marquis. The suggestion in my note might, therefore, rather be considered as advice to the Senior Member of Council to take the designation which, not only the law, but which Government itself had officially assigned to him, than as any "legal opinion to assume that designation" without authority. The only legal Government in this Presidency is, as I humbly conceive, the Governor *in Council*; and the acts of Government can be legally carried on only by the actual or Officiating Governor presiding in Council.

12. I have been confidentially consulted by a former Governor of this Presidency, and also by a former Governor of the Bombay Presidency, upon the expediency of settling, under modifications, the powers of the Governor when absent from the Presidency and its Councils, and, under such consultations, and upon request, I drew up and put into their hands some suggestions, and a draft act of Parliament, to be submitted to the authorities at home, and which I believe we so. But it was never doubted, that I am aware of, that the Senior Member of Council, in the absence of the Governor, did legally officiate as Governor in Council.

13. I have also been consulted confidentially by a Governor as to the mode of carrying on the affairs of Government so as neither his own powers and authority should be substantially interfered with (under whatever differences of opinion prevailing on any particular measures among the Members of Government) nor the forms nor the substance of the law be violated in thus carrying on the Government with the Governor's powers and influence unimpaired. And upon this point I have had no difficulty in suggesting a course calculated to be effectual for these objects—nor has any serious embarrassments, that I have ever been made

6. If, as explicitly declared by the Court of Directors, the Governor when not in Council is "vested with none of the powers conferred by the Legislature," it follows *a fortiori* that he cannot under such circumstances exercise the highest of all powers or that of over-ruling the views of his Council, and acting upon his single will. Indeed, it is clear from a perusal of Act 33, Geo. III, Cap. 52, Sec. 47, that that Section contemplates all the proceedings specified in it—the interchange of written Minutes between the Members of Government, and the recording of his final Minute by the Governor—taking place at the Council Board. By a later Act, indeed—39 and 40, Cap. 79, Sec. 12—it is provided that these several acts need not take place in Council when the Governor is at the Presidency; but in no other case is such latitude allowed, and it would evidently be inconsistent with the whole tenor of that Section.

7. I have offered the above remarks upon the general question, and not with any especial reference to its bearing upon the particular subject now before us, or the assessment of the Trichinopoly District. I gather, however, from His Excellency's last Minute that he is so much opposed to the immediate adoption of the settlement approved by myself and Mr. Maltby, that he would be prepared, if necessary, to return to the Presidency for the purpose of putting a formal veto upon our proceedings in the manner prescribed by the Act. I certainly would not wish to subject His Excellency to the inconvenience of such a journey, not to mention other obvious objections, as it seems to me, to such a course. And if I am to be given to understand that His Excellency would, if necessary, unquestionably resume his seat in Council for the above special purpose, I would accept the will for the deed, and would withdraw from all further consideration of the question and leave it to His Excellency to take his own course in respect to it on his own responsibility.

II

Extracts from Military letters from the East India Company, dated London, the 30th July 1806, and 31st August 1810, to the Governor in Council at Fort St. George.

606. We have perused with attention the argument contained in the several minutes of our Governor and the different Members of our Council at Fort St. George in the course of the discussion upon Military Patronage referred to in your Military letter of the 16th October 1804.

607. It is always a subject of regret to us when matters of this delicate nature become the topics of controversy in our presidencies abroad, nevertheless the ability displayed throughout the whole of the late discussions, the able arguments used by each of the Members of our Council in support of his opinions, and the temper and moderation with which the whole debate seems to have been conducted are entitled to our approbation.

608. We are fully impressed with the importance of an immediate and well-defined decision being given by us upon this subject, and of our opinions for your future guidance being clearly marked out and made known to you, we have not therefore hesitated to take the whole matter into our most serious consideration to investigate the principles upon which our former orders upon the subject of Military patronage were framed and again to correct those orders where they have seemed to require correction in order to render them more precise and better adapted to the political situation of your presidency.

609. The following paragraphs contain the result of our opinions and it being our intention to prevent the possible recurrence of controversies of this nature from again engrossing the time and attention of your Government by giving the most exact directions upon this subject we desire that the rules herein laid down may be fully considered by our Governor, our Commander-in-Chief and the other Members of our Council, and that the same may in future be observed with the utmost strictness.

610. As a general position it is our opinion that all patronage of every kind should *practically as well as theoretically* vest in our President, subject however to the liberal control of our Council.

611. The political importance which we attach to the elevation of our Governor to the highest point of consideration to which consistently with the constitution of Government he can be raised in the eyes of every subordinate department, together with the evils that would flow from vesting the distribution of patronage in many hands, is the foundation of this opinion.

COPY LEGISLATIVE LETTER TO INDIA.

No. 15, DATED LONDON, 2nd July 1841.

India Public Letter 16th December (No. 24), 1840.

10th February (No. 5), 1841.

1. We have thought it right to lay your letters under date the 16th December (No. 24) 1840, and 10th February (No. 5) 1841, together with their respective enclosures before Her Majesty's Attorney and Solicitor General, the Company's Standing Counsel, Sir William Follett and Mr. James Wigram, and to take their opinion upon the legal points which appeared to be involved in them.

2. For your information and guidance, we transmit herewith a number in the packet, a copy of the several questions put to those learned persons, and of the replies which they have given to them.

3. We are fully sensible however that the mode in which the Government of either of the subordinate presidencies would be administered in accordance with the view of the law taken in these opinions during the absence of the Governor is liable to serious objections and under that conviction, we desire that, if, on any occasion such absence should, owing to indisposition or any other cause become necessary, the circumstances of the case be fully reported to us at as early a period as practicable, in order that we may take into consideration the propriety of relieving the Governor by the appointment of a successor.

4. We shall transmit copies of this Despatch, and of its enclosure, to the Governments of Madras and Bombay respectively for their information and guidance.

COPY OF COUNSEL'S OPINION.

Questions.

For the guidance of the Court of Directors in considering these proposed paragraphs and the subject which gave rise to them, the opinion of Her Majesty's Attorney and Solicitor General, of Mr. Sergeant Spankie, of Sir William Follett and of Mr. James Wigram is requested by the Court upon the following points:—

1st. Whether it is lawful for the Governor of Fort St. George or of Bombay to go or reside temporarily beyond the limits of the Presidency whereof he is Governor?

2nd. Whether in the event of the Governor of Fort St. George or Bombay going beyond the limits of his Presidency, but not out of the limits of the Company's Charter, a vacancy in the Office of Governor is thereby created?

3rd. Whether it is competent to the Court of Directors by virtue of the power vested in them by the 61st Section of the Act of 3 and 4, William IV, Cap. 85, to appoint a person provisionally to act as Governor on that contingency?

4th. In what mode the Government of the Presidency is to be carried on during such absence of the Governor? And referring to the Acts of 24, Geo. III, Cap. 25, Section 23 and 33, Geo. III, Cap. 52, Sec. 29.

5th. Whether the Commander-in-Chief being a member of Council and therefore next in rank to the Governor, is the person to whom the powers and authorities given by the Act of 39 and 40, Geo. III, Cap. 79, Section 12 by the term Senior member devolve, although some other Member of Council may be his senior in point of standing.

6. If, as explicitly declared by the Court of Directors, the Governor when not in Council is "vested with none of the powers conferred by the Legislature," it follows *a fortiori* that he cannot under such circumstances exercise the highest of all powers or that of over-ruling the views of his Council and acting upon his single will. Indeed, it is clear from a perusal of Act 33, Geo. III, Cap. 52, Sec. 47, that that Section contemplates all the proceedings specified in it—the interchange of written Minutes between the Members of Government, and the recording of his final Minute by the Governor—taking place at the Council Board. By a later Act indeed—39 and 40, Cap. 79, Sec. 12—it is provided that these several acts need not take place in Council when the Governor is at the Presidency; but in no other case is such latitude allowed, and it would evidently be inconsistent with the whole tenor of that Section.

7. I have offered the above remarks upon the general question, and not with any especial reference to its bearing upon the particular subject now before us, or the assessment of the Trichinopoly District. I gather, however, from His Excellency's last Minute that he is so much opposed to the immediate adoption of the settlement approved by myself and Mr. Maltby, that he would be prepared, if necessary, to return to the Presidency for the purpose of putting a formal veto upon our proceedings in the manner prescribed by the Act. I certainly would not wish to subject His Excellency to the inconvenience of such a journey, not to mention other obvious objections, as it seems to me, to such a course. And if I am to be given to understand that His Excellency would, if necessary, unquestionably resume his seat in Council for the above special purpose, I would accept the will for the deed, and would withdraw from all further consideration of the question and leave it to His Excellency to take his own course in respect to it on his own responsibility.

II

Extracts from Military letters from the East India Company, dated London, the 30th July 1806, and 31st August 1810, to the Governor in Council at Fort St. George.

* * * *

606. We have perused with attention the argument contained in the several minutes of our Governor and the different Members of our Council at Fort St. George in the course of the discussion upon Military Patronage referred to in your Military letter of the 16th October 1804.

607. It is always a subject of regret to us when matters of this delicate nature become the topics of controversy in our presidencies abroad, nevertheless the ability displayed throughout the whole of the late discussions, the able arguments used by each of the Members of our Council in support of his opinions, and the temper and moderation with which the whole debate seems to have been conducted are entitled to our approbation.

608. We are fully impressed with the importance of an immediate and well-defined decision being given by us upon this subject, and of our opinions for your future guidance being clearly marked out and made known to you, we have not therefore hesitated to take the whole matter into our most serious consideration to investigate the principles upon which our former orders upon the subject of Military patronage were framed and again to correct those orders where they have seemed to require correction in order to render them more precise and better adapted to the political situation of your presidency.

609. The following paragraphs contain the result of our opinions and it being our intention to prevent the possible recurrence of controversies of this nature from again engrossing the time and attention of your Government by giving the most exact directions upon this subject we desire that the rules herein laid down may be fully considered by our Governor, our Commander-in-Chief and the other Members of our Council, and that the same may in future be observed with the utmost strictness.

610. As a general position it is our opinion that all patronage of every kind should practically as well as theoretically vest in our President, subject however to the liberal control of our Council.

611. The political importance which we attach to the elevation of our Governor to the highest point of consideration to which consistently with the constitution of Government he can be raised in the eyes of every subordinate department, together with the evils that would flow from vesting the distribution of patronage in many hands, is the foundation of this opinion.

COPY LEGISLATIVE LETTER TO INDIA.

No. 15, DATED LONDON, 2nd July 1841.

India Public Letter 16th December (No. 24), 1840.

" " 10th February (No. 5), 1841.

1. We have thought it right to lay your letters under date the 16th December (No. 24) 1840, and 10th February (No. 5) 1841, together with their respective enclosures before Her Majesty's Attorney and Solicitor General, the Company's Standing Counsel, Sir William Follett and Mr. James Wigram, and to take their opinion upon the legal points which appeared to be involved in them.

2. For your information and guidance, we transmit herewith a number in the packet, a copy of the several questions put to those learned persons, and of the replies which they have given to them.

3. We are fully sensible however that the mode in which the Government of either of the subordinate presidencies would be administered in accordance with the view of the law taken in these opinions during the absence of the Governor is liable to serious objections and under that conviction, we desire that, if, on any occasion such absence should, owing to indisposition or any other cause become necessary, the circumstances of the case be fully reported to us at as early a period as practicable, in order that we may take into consideration the propriety of relieving the Governor by the appointment of a successor.

4. We shall transmit copies of this Despatch, and of its enclosure, to the Governments of Madras and Bombay respectively for their information and guidance.

COPY OF COUNSEL'S OPINION.

Questions.

For the guidance of the Court of Directors in considering these proposed paragraphs and the subject which gave rise to them, the opinion of Her Majesty's Attorney and Solicitor General, of Mr. Sergeant Spankie, of Sir William Follett and of Mr. James Wigram is requested by the Court upon the following points:—

1st. Whether it is lawful for the Governor of Fort St. George or of Bombay to go or reside temporarily beyond the limits of the Presidency whereof he is Governor?

2nd. Whether in the event of the Governor of Fort St. George or Bombay going beyond the limits of his Presidency, but not out of the limits of the Company's Charter, a vacancy in the Office of Governor is thereby created?

3rd. Whether it is competent to the Court of Directors by virtue of the power vested in them by the 61st Section of the Act of 3 and 4, William IV, Cap. 85, to appoint a person provisionally to act as Governor on that contingency?

4th. In what mode the Government of the Presidency is to be carried on during such absence of the Governor?

And referring to the Acts of 24, Geo. III, Cap. 25, Section 23 and 33, Geo. III, Cap. 52, Sec. 29.

5th. Whether the Commander-in-Chief being a member of Council and therefore next in rank to the Governor, is the person to whom the powers and authorities given by the Act of 39 and 40, Geo. III, Cap. 79, Section 12 by the term Senior member devolve, although some other Member of Council may be his senior in point of standing.

Answers.

1. Understanding the words "reside temporarily" to mean temporary absence from within the limits of his Government with the intention of returning, we are of opinion that it is not unlawful for the Governor of Fort St. George, or of Bombay, to reside temporarily beyond the limits of his Presidency, if he do so on account of ill health or for other reasonable cause.

2. We are of opinion that in the event of the Governor of Fort St. George or Bombay going beyond the limits of his Presidency, but not out of the limits of the Company's Charter, no vacancy in the office of Governor is thereby created.

3. We are of opinion that the powers vested in the Court of Directors, by 3 and 4, William IV, Cap. 85, Section 61, apply to cases of vacancy and that it is not competent to the Court by virtue of that provision to appoint a person provisionally to act as Governor on the contingency of the Governor of Fort St. George or Bombay going beyond the limits of his Presidency, but not out of the limits of the Company's Charter, no vacancy being thereby created.

4. We are of opinion that during such absence of the Governor, the Government of the Presidency must be carried on under the provisions of 39 and 40, Geo. III, Cap. 79, Sec. 12.

5. We are of opinion that the Commander-in-Chief, being a Member of Council and consequently next in rank to the Governor, is, under the term "Senior Member," the person on whom the powers and authorities given by 39 and 40, Geo. III, Cap. 79, Sec. 12, devolve, although some other member of Council may be his Senior in point of standing.

(Signed) J. CAMPBELL.
(") THOS. WILDE.
(") R. SPANKIE.
(") W. W. FOLLETT.
(") JAMES WIGRAM.

WESTMINSTER HALL,
31st May, 1841.

Further Query on the case for the East India Company.

Adverting to your opinion of 31st May 1841, and to the case and papers on which that opinion was founded, you are requested further to advise the Court of Directors of the East India Company.

Whether the case of the continuous absence of a Governor of Fort St. George or Bombay at the Cape of Good Hope or elsewhere beyond the seas, but not out of the limits of the Company's Charter, on account of his health, but with the intention of returning to his Presidency, is provided for by the enactments of 39 and 40, Geo. III, Cap. 79, Sec. 12, and whether the fact of such absence continuing for one or six or any other given number of months, makes any difference in your view of the effect of that enactment.

Answer.

The statute requires that the Governor shall signify his intended absence to the Council, and we are of opinion that this does not involve any obligation, or necessity to give notice from Council to Council held during his absence, and we are consequently of opinion that the case of the continuous absence of a Governor of Fort St. George or Bombay, at the Cape of Good Hope or elsewhere beyond the seas, but not out of the limits of the Company's Charter on account of his health or for other reasonable cause, but with the intention of returning to his Presidency, is provided for by the enactments of 39 and 40, Geo. III, Cap. 79, Sec. 12, and the fact of such absence continuing for one or six, or any other given number of months, makes no difference in our view of the effect of that enactment.

(Signed) J. CAMPBELL.
(") THOS. WILDE.
(") R. SPANKIE.
(") W. W. FOLLETT.
(") JAMES WIGRAM.

WESTMINSTER HALL,
8th June, 1841.

LEGISLATIVE DEPARTMENT.

No. 2, DATED LONDON, 18th March, 1846.

Our Governor in Council at Fort St. George.

PUBLIC LETTER, 24TH JANUARY, (No. 4) 1846.

In the communication we made to you under date the 2nd of July 1841 we observed: "We are fully sensible however that the mode in which the Government of either of the Subordinate Presidencies would be administered in accordance with the view of the law taken in these opinions during the absence of the Governor is liable to serious objection." And again in our letter of the 5th of November last we informed you that we were aware that inconvenience must necessarily be attendant on the separation of the Governor from the Council but that we felt assured that the several Members of your Board would cordially co-operate with each other to diminish that inconvenience as far as possible.

2. We are disappointed therefore to learn from your letter of the 24th January that Mr. Chamier has raised difficulties by anticipation with respect to the mode in which the Government is to be administered during the intended absence of the Marquis of Tweeddale from the Presidency on account of his health. It was not only unnecessary but very objectionable to propose a reference to the Advocate General when you were already in possession of the opinions of the highest legal authorities in this Country and of our suggestions in transmitting those opinions. The difficulties were obviously of a character and nature not to be overcome by any legal advice but by an accommodating and conciliatory disposition on the part of all the Members of Government and we see no objection to the course proposed by your President that during his absence "all questions of importance should be brought under the consideration of all the Members of Government and as far as circumstances will allow that the orders on them shall be proposed by the Governor."

Extract from letter from the Advocate General to the Secretary to Government, Public Department, dated 8th January 1847.

2: The Minute then proceeds to invite my submission of "any explanations I may now be desirous to offer;" and it calls for my reply at an early date.

8. Upon the first point, I would observe, preliminarily, that Government considers this note of Mr. Chamier's as a deliberate reference of a law case for my official opinion, and that my answer has the character of an official opinion on a substantial legal question of concernment to the Government. Certainly, if this reference to me by Mr. Chamier, in whatever way couched, had for its object the ascertainment of his powers and position in Council at the Presidency during the absence of the Most Noble the Governor (altho' the immediate point was whether he should sign under any formal designation, and what) then, I allow, that in such case, as in many others, "form becomes substance"—and that the reference aimed at, and the answer was directed to, the solution of a substantial point of law. If I had supposed that this was a matter in controversy—or rather if I had not concluded from data which I conceive will appear irrefragable, that no doubt or difficulty then, or ever had, existed as to what the law was on this point—I will venture to say that I certainly should not have advised privately with any single Member of Council, in whatever capacity acting, on a subject involving, directly or indirectly, a question upon which that Member and the Governor himself differed in opinion. But I beg to say that I did not at the time, nor do I now, understand that the reference of Mr. Chamier to me had any such object. I never supposed, nor had I reason to suppose, that the mode of transacting the affairs of Government during the absence of the Most Noble the Governor from the

Presidency and the Council Board, or the powers or position of the senior Member during such absence, were in question or under controversy. I have never been consulted, directly or indirectly, by Government or by any party in it, upon such topics. I imagined, and I still imagine, as I shall presently further shew, that upon these points the law was settled, notorious, and clear. I, therefore, looked upon the reference as involving no matter of doubtful or disputed law upon which I was desired to offer a legal opinion—but a mere matter of form with respect to the insertion or otherwise of the designation or capacity in which Mr. Chamier was to sign a document, where no doubt was made in any quarter as to that capacity in which he was legally acting—and involving a question of no further concernment, than as respected the formal regularity of the Warrant, and the personal act of Mr. Chamier himself.

10. Upon this point I have to represent to the consideration of Government that during the existence of all the previous Governments in this Presidency which I have had the honor to serve, it has been customary to delegate the powers of the Governors in Council to the Senior Member left acting in Council at the presidency, during the absence of the Governor himself at such a distance as to preclude him from attending the Council, or from acting personally according to the provisions of Section 12 of 39th and 40th, Geo. III, Cap. 79—and that, if no such formal delegation took place, yet those powers are necessarily assumed by the Senior Member as by course of law. I remember a serious controversy once arising as to what party—the Commander-in-Chief, or the Senior *Civil* Member—should be considered as entitled or bound to exercise such powers, but I never heard of its being questioned or debated that the Senior Member should so preside and exercise the functions of the Governor in Council (as indeed the above quoted statute expressly provides) and that the functions and powers of the actual Governor were, in point of law, suspended until his return to the Presidency or Council Board.

11. If I mistake not, upon the recent departure of the Most Noble the Governor for Ootacamund, a Proclamation was made that the Government would be carried on in the name of “the Honorable the Governor in Council”—which designation does not, of course, apply to the Most Noble the Marquis. The suggestion in my note might, therefore, rather be considered as advice to the Senior Member of Council to take the designation which, not only the law, but which Government itself had officially assigned to him, than as any “legal opinion to assume that designation” without authority. The only legal Government in this Presidency is, as I humbly conceive, the Governor *in Council*; and the acts of Government can be legally carried on only by the actual or Officiating Governor presiding in Council.

12. I have been confidentially consulted by a former Governor of this Presidency, and also by a former Governor of the Bombay Presidency, upon the expediency of settling, under modifications, the powers of the Governor when absent from the Presidency and its Councils, and, under such consultations, and upon request, I drew up and put into their hands some suggestions, and a draft act of Parliament, to be submitted to the authorities at home, and which I believe were so. But it was never doubted, that I am aware of, that the Senior Member of Council, in the absence of the Governor, did legally officiate as Governor in Council.

13. I have also been consulted confidentially by a Governor as to the mode of carrying on the affairs of Government so as neither his own powers and authority should be substantially interfered with (under whatever differences of opinion prevailing on any particular measures among the Members of Government) nor the forms nor the substance of the law be violated in thus carrying on the Government with the Governor's powers and influence unimpaired. And upon this point I have had no difficulty in suggesting a course calculated to be effectual for these objects—nor has any serious embarrassments, that I have ever been made

“absence to such Council so to be assembled, then and in every such case, the Senior Member for the time being who shall be present at the Council so assembled shall preside at such Council, in such manner and with such full powers and authorities during the time that such Council shall continue to be assembled as such Governor would have had, in case he were himself actually present at such Council.”

12. We are informed by your letter of 30th September that the supreme Government have transmitted to you the interpretation put upon this statute by Sir Charles Grey, and their decision in conformity with that interpretation, *viz.*—“that the functions and seat of President at the Meetings of the Council at Fort St. George must, during the absence of the Right Honorable the Governor, be yielded to the Commander-in-Chief and Senior member of the Council.” The same interpretation is given to it by our standing Counsel. The law, therefore, on this point may be considered as settled.

13. We are aware that the recommendation of personal inspection by the President of parts of the country under his Government, stands upon high authority, and we doubt not that advantage may at times be derived from it. But we believe that this advantage, whatever it be, is very often overbalanced by the obstruction to business, the want of that discussion of public measures in full Council, which is the main end of the Institution of a Council, and various other evils which attend the absence of the President from the seat of the Public Business. A Council indeed can only be summoned regularly by the President, and there is but one case of irregularity, for which provision is made, that of a President “refusing or neglecting” to summon; in which case two or three of the other Members may sign an order to the Secretary for that purpose, so that a Council can be summoned in the absence of the President only by supposing a breach duty on his part.

14. Another point, the consequences of which have impressed us as deserving great consideration is this—that whereas the Legislature has conferred the powers of Government expressly upon the “Governor *in Council*.” The Governor, when not in Council, is vested with none of the powers so conferred. That this was even in the view and intention of the Legislature seems to be distinctly indicated by the fact, that in the case of the Governor General, it did by the Act 33rd, George III, Cap. 52, Sec. 54, convey the powers which were suited to the occasion.

15. We have, therefore, come to the resolution of forbidding the absence of our Governors at Madras and Bombay from the seat of their Government and the scene of the great business which they are appointed to transact. In so doing we do not overlook the possibility of these extraordinary occasions which may fully deserve to be considered as exceptions to the general rule. But in all cases in which a Governor violates this general rule, we require for the justification of such departure from it that he shall, previously to quitting the Presidency, formally record a minute, stating at length the reasons which have to him appeared to call for his temporary absence; and that such minute be transmitted to us by the first opportunity after it shall have been recorded.

LEGISLATIVE DEPARTMENT.

No. 5, DATED LONDON, 2nd July 1841.

Our Governor in Council at Fort St. George.

Absence of the Governor of Madras or Bombay beyond the limits of the Presidency.

We forward you a copy of our Despatch to the Government of India of this date on the subject noticed in the margin together with a copy of its enclosure.

Presidency and the Council Board, or the powers or position of the senior Member during such absence, were in question or under controversy. I have never been consulted, directly or indirectly, by Government or by any party in it, upon such topics. I imagined, and I still imagine, as I shall presently further shew, that upon these points the law was settled, notorious, and clear. I, therefore, looked upon the reference as involving no matter of doubtful or disputed law upon which I was desired to offer a legal opinion—but a mere matter of form with respect to the insertion or otherwise of the designation or capacity in which Mr. Chamier was to sign a document, where no doubt was made in any quarter as to that capacity in which he was legally acting—and involving a question of no further concernment, than as respected the formal regularity of the Warrant, and the personal act of Mr. Chamier himself.

10. Upon this point I have to represent to the consideration of Government that during the existence of all the previous Governments in this Presidency which I have had the honor to serve, it has been customary to delegate the powers of the Governors in Council to the Senior Member left acting in Council at the presidency, during the absence of the Governor himself at such a distance as to preclude him from attending the Council, or from acting personally according to the provisions of Section 12 of 39th and 40th, Geo. III, Cap. 79—and that, if no such formal delegation took place, yet those powers are necessarily assumed by the Senior Member as by course of law. I remember a serious controversy once arising as to what party—the Commander-in-Chief, or the Senior *Civil* Member—should be considered as entitled or bound to exercise such powers, but I never heard of its being questioned or debated that the Senior Member should so preside and exercise the functions of the Governor in Council (as indeed the above quoted statute expressly provides) and that the functions and powers of the actual Governor were, in point of law, suspended until his return to the Presidency or Council Board.

11. If I mistake not, upon the recent departure of the Most Noble the Governor for Ootacamund, a Proclamation was made that the Government would be carried on in the name of “the Honorable the Governor in Council”—which designation does not, of course, apply to the Most Noble the Marquis. The suggestion in my note might, therefore, rather be considered as advice to the Senior Member of Council to take the designation which, not only the law, but which Government itself had officially assigned to him, than as any “legal opinion to assume that designation” without authority. The only legal Government in this Presidency is, as I humbly conceive, the Governor *in Council*; and the acts of Government can be legally carried on only by the actual or Officiating Governor presiding in Council.

12. I have been confidentially consulted by a former Governor of this Presidency, and also by a former Governor of the Bombay Presidency, upon the expediency of settling, under modifications, the powers of the Governor when absent from the Presidency and its Councils, and, under such consultations, and upon request, I drew up and put into their hands some suggestions, and a draft act of Parliament, to be submitted to the authorities at home, and which I believe were so. But it was never doubted, that I am aware of, that the Senior Member of Council, in the absence of the Governor, did legally officiate as Governor in Council.

13. I have also been consulted confidentially by a Governor as to the mode of carrying on the affairs of Government so as neither his own powers and authority should be substantially interfered with (under whatever differences of opinion prevailing on any particular measures among the Members of Government) nor the forms nor the substance of the law be violated in thus carrying on the Government with the Governor's powers and influence unimpaired. And upon this point I have had no difficulty in suggesting a course calculated to be effectual for these objects—nor has any serious embarrassments, that I have ever been made

I.

33 Geo. III, Chapter 52.

Section 47.—And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and despatch to the measures and proceedings of the Executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal, and the several Governors of Fort St. George and Bombay, were vested with a discretionary power of acting without the concurrence of their respective Councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting, or forbearing to act: be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the Councils of Fort St. George and Bombay, whereby the interests of the said United Company, or the safety or tranquillity of the British possessions in India, or any part thereof, are, or may, in the judgment of the Governor-General or of the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other Members of such Council then present shall differ in and dissent from such opinion, the said Governor-General or such Governor, and the other Members of the Council, shall, and they are hereby directed forthwith mutually to exchange with and communicate in Council to each other, in writing under their respective hands (to be recorded at large on their secret consultations) the respective grounds and reasons of their respective opinions; and if, after considering the same, the said Governor-General, or such Governor respectively, and the other Members of the said Council, shall severally retain their opinions, it shall and may be lawful to and for the Governor-General in the Supreme Council of Fort William, or either of the said Governors in their respective Councils, to make and declare any order (to be signed and subscribed by the said Governor-General, or by the Governor making the same), for suspending or rejecting the measure or question so proposed or agitated, in part or in the whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said Governor-General, or such Governors in their respective Councils, shall think fit and expedient; which said last-mentioned order and resolution, so made and declared, shall be signed as well by the said Governor-General, or the Governor so making and declaring the same, as by all the other Members of the Council then present, and shall, by force and virtue of this Act be as effectual and valid, to all intents and purposes, as if all the said other Members had advised the same, or concurred therein; and the said Members of Council, and all officers, Civil and Military, and all other persons concerned, shall be and they are thereby commanded, authorized, and enjoined to be obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

Section 48.—And be it further enacted, that the Governor-General, or Governor, who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other Members of Council, shall alone be held responsible for the same, and the consequences thereof.

Section 49.—Provided always, and be it further enacted, that nothing in this Act contained shall extend, or be construed to extend, to give power to the said Governor-General of Fort William in Bengal, or to either of the said Governors of Fort St. George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the Councils of the respective Governments or presidencies, anything herein contained to the contrary notwithstanding.

Section 12.—And be it further enacted, that if the Governor-General of Fort William in Bengal for the time being, or the Governor of the said Presidency of the Fort St. George, and of the said Presidency and island of Bombay respectively for the time being, shall happen to be absent from any Council to be assembled for the said respective Presidencies of Fort William and Fort St. George, and the said Presidency and island of Bombay, owing to indisposition or any other cause whatsoever, and shall signify such his intended absence to such Council, so to be assembled; then and in every such case the Senior Member for the time being who shall be present at the Council so assembled, shall preside at such Council, in such manner, and with such full powers and authorities, during the time that such Council shall continue to be assembled, as such Governor-General or Governor might or would have had in case such Governor-General or Governor were himself actually present at such Council: provided nevertheless, that no act of any Council so held shall be valid to any effect, whatsoever, unless the same shall be signed by such Governor-General or Governor respectively, if such Governor-General or Governor shall at the time be resident at the Presidency at which such Council shall be so assembled, and shall not be prevented by such indisposition from signing the same: provided always, that in case such Governor-General or Governor, not being so prevented as aforesaid, shall decline or refuse to sign such act of Council, he and the several Members of Council who shall have signed the same, shall mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility of such Governor-General or Governor respectively, as are by the said Act, passed in the thirty-third year of the reign of his present Majesty, provided and directed, in cases where such Governor-General or Governor respectively shall, when present, dissent from any measure proposed or agitated in such Council respectively.

PUBLIC DEPARTMENT.

No. 27, DATED LONDON, 16th May 1832.

Our Governor in Council at Fort St. George.

1. We now reply to your letters dated 10th May and 30th September 1831.

2. Your letter of 10th May presents for our consideration certain difficulties and doubts which have arisen, from the absence of your President, at different times, from the seat of his Government, and from his Council.

3. Three questions have been raised upon points of law.

The first is, whether the Governor of Fort St. George, upon the occasion of his absence from the Presidency, can appoint a Vice-President.

The second, whether during such absence, the command of the Troops in the Garrison of Fort St. George devolves on the Commander-in-Chief.

And the third, by what Member of the Government, during any temporary absence of the President his chair in Council shall be filled.

4. These questions have appeared to us of sufficient importance to be referred to our standing Counsel, and we shall now communicate to you the answers, with such further observations, as the case appears to us to require.

5. With respect to the first of the above questions, whether the President can appoint a Vice-President, the following points are certain:—first, that no such power is granted to the Governor of Fort St. George by any act of Parliament; secondly, that such power is expressly granted to the Governor General by the Act of 33rd, George III, Cap. 52, Section 53. But if nothing less than an Act of Parliament could give this power to the Governor General, as is clearly to be inferred from the fact that an enactment has been made for that purpose, it follows, that with regard to the other Presidencies, where such power has not been so granted, it does not exist.

6. With respect to the second of the questions raised; whether the command of the Troops in the garrison of Fort St. George devolves on the Commander-in-Chief on occasion of any absence of the Governor from the Presidency; we observe that the command of Fort St. George by the express terms of the Commission to the Commander-in-Chief, is excepted from his general command, and that but in one instance, namely, that of actual siege, is any change in the command of the Fort contemplated or authorized by the Court of Directors. It is clear therefore, that except in the case of a siege, the command of the Fort necessarily remains with the Governor, though the more immediate duties must of course be performed by the officer employed to act under him.

7. With respect to the third question, by what Member of the Council the chair of the President is to be filled, when he is absent, there are two cases, which it was necessary to provide for; the one, that of the temporary absence of the President, the other, that of a vacancy in his office by death or otherwise.

8. The Act 24th, Geo. III, Cap. 25, Section 23, enacts, that whenever any vacancy of the office of Governor shall happen, either by death, resignation or recall, then the Court of Directors shall supply the vacancy as therein mentioned; but the next section (the 24th which is in the form of a proviso) enacts that the Commander-in-Chief shall in no case succeed to the office of Governor, unless thereunto specially appointed by the Court, but that in case of the vacancy of the Office of Governor, when no person shall be specially appointed to succeed thereto, the Councillor next in rank to such Commander-in-Chief shall succeed to such Office, and hold the same, until some other person shall be appointed thereunto by the Court of Directors; and the 33rd, Geo. III, Cap. 52, Section 29, enacts, that if any vacancy shall happen in the Office of Governor when no provisional or other successor shall be upon the spot to supply such vacancy, then the Councillor next in rank to the Governor shall hold and execute the Office until a successor shall arrive, but the 30th Section expressly provides and enacts, that, in case of such vacancy, "any Commander-in-Chief, although he shall be then a Member of the Council of the Presidency where such vacancy shall occur, shall not succeed to the temporary Government of such Presidency, unless such Commander-in-Chief shall have been provisionally appointed to supply the same, but that the vacancy shall be supplied by the Councillor next in rank at the Council Board to such Commander-in-Chief."

9. These two Enactments provide for the second of the two emergencies specified above, that of a vacancy in the office of President, when no appointed successor is on the spot; and the mode providing for it is abundantly clear; the Military Member of Council being excluded by name, the Senior Councillor after that exclusion is the person marked for the temporary occupant.

10. The Court of Directors in their despatch of the 9th of 1799 (quoted in your letter now under reply) used the following words: "It appears to us that both the letter and the spirit of the late Act of Parliament, militate against your decision upon the case in question, we therefore direct, that, on any temporary absence from sickness or otherwise of the President of your Board, the Senior Civil Councillor is to be considered in future as the acting President, during such temporary absence unless the Commander-in-Chief shall have been previously appointed to succeed to the Government." The Court in this passage made reference probably to the latter act, that 1793, and making no distinction between the case of a vacancy in the Office, when there is no President, and one is to be supplied, and that of a temporary absence of an actual President, when there is no vacancy, they transferred the provision which the legislature had made for the case of vacancy to that of absence, and directed the same exclusion of the Military Member of Council in the one case, as in the other; and, in the absence of all enactment on the subject, it was no doubt competent for them to do so.

11. After this, however, it was enacted by the 12th Section of the 39th and 40th, Geo. III, Cap. 79, "that if the Governor for the time being, shall happen to be absent from any Council to be assembled for the Presidency, owing to indisposition, or any other cause whatsoever, and shall signify such his intended

4
 "absence to such Council so to be assembled, then and in every such case, the
 "Senior Member for the time being who shall be present at the Council so
 "assembled shall preside at such Council, in such manner and with such full
 "powers and authorities during the time that such Council shall continue to be
 "assembled as such Governor would have had, in case he were himself actually
 "present at such Council.

12. We are informed by your letter of 30th September that the supreme Government have transmitted to you the interpretation put upon this statute by Sir Charles Grey, and their decision in conformity with that interpretation, viz.,—
 "that the functions and seat of President at the Meetings of the Council at Fort St. George must, during the absence of the Right Honorable the Governor, be yielded to the Commander-in-Chief and second member of the Council." The same interpretation is given to it by our Standing Counsel. The law, therefore, on this point may be considered as settled.

13. We are aware that the recommendation of personal inspection by the President of parts of the country under his Government, stands upon high authority, and we doubt not that advantage may at times be derived from it. But we believe that this advantage, whatever it be, is very often overbalanced by the obstruction to business, the want of that discussion of public measures in full Council, which is the main end of the Institution of a Council, and various other evils which attend the absence of the President from the seat of the Public Business. A Council indeed can only be summoned regularly by the President, and there is but one case of irregularity, for which provision is made, that of a President "refusing or neglecting" to summon; in which case two or three of the other Members may sign an order to the Secretary for that purpose, so that a Council can be summoned in the absence of the President only by supposing a breach duty on his part.

14. Another point, the consequences of which have impressed us as deserving great consideration is this—that whereas the Legislature has conferred the powers of Government expressly upon the "Governor in Council." The Governor, when not in Council, is vested with none of the powers so conferred. That this was even in the view and intention of the Legislature seems to be distinctly indicated by the fact, that in the case of the Governor General, it did by the Act 33rd, George III, Cap. 52, Sec. 54, convey the powers which were suited to the occasion.

15. We have, therefore, come to the resolution of forbidding the absence of our Governors at Madras and Bombay from the seat of their Government and the scene of the great business which they are appointed to transact. In so doing we do not overlook the possibility of those extraordinary occasions which may fully deserve to be considered as exceptions to the general rule. But in all cases in which a Governor violates this general rule, we require for the justification of such departure from it that he shall, previously to quitting the Presidency, formally record a minute, stating at length the reasons which have to him appeared to call for his temporary absence; and that such minute be transmitted to us by the first opportunity after it shall have been recorded.

LEGISLATIVE DEPARTMENT.

No. 5, DATED LONDON, 2nd July 1841.

Our Governor in Council at Fort St. George.

Absence of the Governor of Madras or Bombay beyond the limits of the Presidency.

We forward you a copy of our Despatch to the Government of India of this date on the subject noticed in the margin together with a copy of its enclosure.

[7]
 ORDINARY, MS.

Public DEPARTMENT.
G.O., DATED 12. July 1889
No. 505 Min.

*Confidential No 112
 1889*

When given for copying

[Despatch Abstract.]

*Main Newspapers Distributing
 Report on Madras - for fortnight
 ending 30. June 1889.*

[7]
 ORDINARY, MS.

DEPARTMENT.
G.O., DATED
No.

When given for copying

[Despatch Abstract.]