EAST INDIA, PUBLIC WORKS.

Report of the Committee on the Home Administration of Indian Affairs.

I.

1. The Committee was appointed to enquire into the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. We were directed to have regard generally to the proposals made in the Report on Indian Constitutional Reforms for the reform of the Government of India and provincial Governments, and in particular to the recommendations contained in paragraphs 290 to 295 of the Report.

2. Our terms of reference were as follows:—

(1) To advise what changes should be made in—

(*a*) the existing system of Home administration of Indian affairs; and in

(*b*) the relations between the Secretary of State, or the Secretary of State in Council, and the Government of India, both generally and with reference to relaxation of the Secretary of State's powers of superintendence, direction, and control.

(2) To examine in particular—

(*a*) the constitutional powers of the Council of India, its relation to the Secretary of State as affecting his responsibility to Parliament, and otherwise, and the financial and administrative control exercised by the Council;

(*b*) the composition of the Council, the qualifications, method of appointment and term of office of its members, and the number of Indian members;

(*c*) the working of the Council in relation to Office procedure;

(*d*) the general departmental procedure of the India Office;

(*e*) the organisation of the India Office establishment, and the question of modifying the system of its recruitment so as to provide for—

(i) the interchange of appointments with the Indian Services, and

(ii) the throwing open of a proportion of appointments to Indians;

and to make recommendations.

(3) To advise whether any of the charges on account of the India Office, and if so what charges, should be placed along with the Secretary of State's salary upon the Estimates.

(4) To advise how effect should be given, by legislation or otherwise, to the Committee's recommendations.

(5) To enquire into and report upon any other matters cognate or relevant to the above, which it may consider expedient to take into consideration.

3. At the outset of our proceedings we felt a certain difficulty regarding matters of military administration, which on a strict view might be held as falling within the scope of our enquiry. We were in doubt whether it was contemplated that these matters should be included among the problems which the Committee was constituted to investigate; and we therefore sought and obtained a ruling that they could be omitted from our consideration.

4. In the interpretation of Head I. of our terms of reference, we have designed our work to be complementary to that already completed by the two Committees which have reported under Lord Southborough's presidency on the new franchise and the allotment of functions. In order to present on a reasoned basis our conception of the functions to be discharged in the future by the Home administration of India, we have found it necessary to assume something as to the functions to be assigned to the Government of India; and with this object in view we have accepted as our starting-point the conclusions of the Committee on Functions, in so far as they indicate the relations between the central and local Governments in India.

5. We desire to record our regret that Lord Inchcape was prevented by illness from joining the Committee. We feel that his wide experience and sound judgment would have been an invaluable help to us in our deliberations.

OT 139 3000 7/19

6. The Committee assembled at the India Office on the 5th March 1919. In all, we have held 33 meetings and examined 20 witnesses, whose names are given in the appendix to this Report. The nature of the evidence taken was determined to a considerable extent by the necessity of eliciting the facts of the existing system. As it was clear that our conclusions might materially affect the status of the Council of India, we thought it right to give the members individually an opportunity of placing their views before us. In addition, we have had the great advantage of hearing Mr. Austen Chamberlain, in whose term of service at the India Office the scheme of Indian Reform had its inception.

II.

7. We have set constantly before us the declared policy of His Majesty's Government, namely, "the gradual development of self-governing institutions, with a view "to the progressive realisation of responsible government in India as an integral part "of the British Empire." To make clear our position in regard to the changes which in our opinion should be made in the system of the Home Administration of Indian affairs in order to achieve the end in view, it will not be out of place to recall briefly the steps in evolution which have tended to differentiate the India Office in some important respects from other Government departments.

8. There is much in the existing system which has its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. These operations led to the exercise by the Company of governmental powers, in regard to which Parliament from an early date asserted its supremacy. The interaction of the two forces had by 1858 produced a constitution which may shortly be described as follows:—The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, "operations, and concerns which in anywise relate to the civil or military government "or revenues of the British territorial possessions in the East Indies" (24 Geo. III., sess. 2, c. 25). Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.

9. The transference of the administration of India to the Crown in 1858 was effected by the Act for the Better Government of India (21 & 22 Vict., c. 106), which has regulated the Home administration of India since that year, and of which the main provisions were re-enacted in the consolidated Government of India Act, 1915–16. In general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured; but the persistence of the dual principle can still be traced in the corporate activities of the Secretary of State in Council.

10. "The Secretary of State has and performs all such or the other like powers "and duties relating to the government or revenues of India, and has all such or the "like powers over all officers appointed or continued under this Act, as, if the "Government of India Act, 1858, had not been passed, might or should have been "exercised or performed by the East India Company, or by the Court of Directors ". . . . . either alone or by the direction or with the sanction or approbation of "the Commissioners for the Affairs of India" (*i.e.*, the Board of Control), "in relation "to that government or those revenues and the officers and servants of that Company, "and also all such powers as might have been exercised by the said Commissioners "alone." (Government of India Act, 1915–16, section 2 (1).)

11. The functions assigned to the Council of India were in some respects derived from the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the "business transacted in the United Kingdom in relation to the Government of India

" and the correspondence in an inst[illegible]ndia." But at the same time they were given a special function, which to the[illegible]resumably intended to act as a counterpoise to the centralisation of powers [illegible]ded the hands of the Secretary of State. In regard to certain decisions, and notably in regard to " the grant or appropriation of any part of " the revenues of India, the concurrence of a majority of votes at a meeting of the Council of India is required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasised, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the Table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicates to the members his reasons for his action; and secondly, that " where an order or " communication concerns the levying of war, or the making of peace, or the public " safety, or the defence of the realm, or the treating or negotiating with any prince " or State, or the policy to be observed with respect to any prince or State, and a " majority of votes therefor at a meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council, if he considers that the matter is of a nature to require secrecy. Our description of the statutory functions of the Secretary of State and the Council of India is designedly brief, because we feel that the enumeration of legal powers and safeguards can only create a very inadequate impression of the actual principles which have been evolved in the working of the system. There are some elements which, as we have tried to show, have been derived from the days of a chartered company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its Ministerial representative; but the whole organism has been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constitutional terms. We are content for our purposes to envisage the system in its present working and in its reaction to the new conditions of Indian administration.

12. The Council consists of from ten to fourteen members, each appointed for seven years, of whom nine at least must have served or resided in British India for ten years and must not have left India more than five years previously to their appointment. It is in the main a body differing in status but not in nature from the authorities in India whose activities come under its review. The Secretary of State in Council represents in fact the supreme element of expert control at the higher end of the chain of official administration. In his corporate capacity he has delegated wide powers to the Indian administrations without divesting himself of his ultimate responsibilities as the governing authority. The main provisions of the Act of 1858, as we understand them, had the effect of giving prominence to these official duties of the corporation it established. But the Secretary of State, as distinct from the Secretary of State in Council, is generally responsible as a Minister for the co-ordination of Indian and Imperial policy. The Council are by law in a position to obstruct his policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions, to which we shall revert, to illustrate the way in which the hard outlines of legal definition have been rounded off by constitutional usage. But we are more immediately concerned at present with the collective functions of the Secretary of State in Council in their relation to the Government of India. And in that relation the governing body was designed to assert an active supremacy. All measures, administrative, financial and legislative, of the authorities in India are referred to it for examination and decision, except in so far as by general or special orders it has delegated powers of sanction. Delegation has been carried out largely as a matter of expediency, with the direct object of increasing administrative efficiency; it has not implied, and has not been intended to imply, any radical change in the respective functions of the authorities between whom it has taken place. The Secretary of State in Council retains the ultimate authority as the head of the system; and we have now

to see how far the conception of graduated official control—tempered, it may be, at various stages by the advice of representatives of the people—can be adapted to the principle of popular responsibility which is to be introduced.

III.

13. The features which typify the Reforms Scheme are the transfer of some subjects of administration from officers of the Crown to representatives of the people in the provinces, and the encouragement in the Indian legislatures of an authoritative expression of popular opinion to which the governments will become increasingly responsive. Simultaneously with these developments a systematic delegation of powers, which, indeed, has long been felt to be desirable in the interests of efficiency, is contemplated in order that the free influence of the new forces may not be blocked at the outset by some survival of the system they are intended eventually to supplant. Leaving on one side for the present the provincial aspects, we proceed to discuss the effects of the scheme on the Government of India, where, it will be remembered, there is no transfer of subjects but a marked enlargement of popular representation. The new constitution of the Indian Legislative Assembly, which will give to the non-official members a substantial majority, is bound to make its weight felt with the Government of India. The problem with which we are immediately concerned is to secure that the opinion of the Assembly should carry corresponding weight with the authorities in whom is vested the power of controlling the Government of India. It appears to us that the conception of the Reforms Scheme leads naturally to the acceptance of the principle, which we here state in general terms, that where the Government of India find themselves in agreement with a conclusion of the Legislative Assembly, their joint decision should ordinarily prevail. We set out below what we conceive to be the application of the principle to the main divisions of governmental functions.

14. First as regards legislation. At the outset, we think it desirable to secure that the authority of the Legislative Assembly will not be restricted by Government intervention through the Council of State save on the direct instructions of the Secretary of State. The authors of the Joint Report lay down that the special procedure is to be applied only in three cases: first, where a Bill is passed by the Legislative Assembly in a form which imperatively requires amendment; secondly, where the Assembly refuses leave to the introduction of a Bill which the Government regard as necessary, or throws out the Bill at any stage; and thirdly, where in cases of emergency the consideration of a measure by both Chambers would take too long if the emergency which calls for the measure is to be met. On each occasion the Governor-General in Council must certify that the required amendments, or the provisions of the Bill as presented to the Assembly, are essential to the interests of peace, order or good government. Following the phraseology of the Joint Report, we recommend that the Governor-General should be instructed that save in the case of absolute necessity no measure should be certified for enactment by the Council of State without previous approval of its substance by the Secretary of State on the ground that the legislation proposed is essential in the interests of the peace, order, and good government of India. We note that the words employed in clause 20 (4) of the Government of India Bill, regarding certification by the Governor-General in Council, are "the safety, tranquillity, or interests of British India or any part thereof," which appear to be of somewhat wider import than those in the Joint Report.

15. In normal cases, where legislation comes before the Secretary of State, it must already have received the assent of the Governor-General, and must have been passed by a majority of votes in the Council of State and in the Legislative Assembly. But inasmuch as there is a substantial official vote in the latter body and normally an official majority in the former, it follows that the measure has not necessarily the support of a majority of the non-official members in either Chamber. In order, therefore, to give proper emphasis to the legislative authority of the Assembly, we recommend that whenever legislation has the support of a majority of the non-official members of the Legislative Assembly, assent should be refused only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order, and good government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly. We would complete our conception of the status to be assigned to Indian legislation by a further suggestion. It appears to us that the exercise of the Governor-General's statutory duties in regard to Acts of the Indian Legislature, as defined in section 68 of the

Government of India Act, might suitably be regulated by definite principles laid down for his guidance in an instrument of instructions issued in His Majesty's name. Effect might be given to the suggestion by amending section 68 so as to read "the Governor-General may declare, *according to his discretion but subject to His Majesty's instructions*, that he assents to the Bill, or," &c.

16. In examination of the Budget, and in criticism of general administration, the Legislative Assembly can express its views only by means of resolutions; and these will continue to be advisory in character, without legal sanction. The Government may accept a resolution either because they agree with it from the outset, or because they decide to defer to the opinion of the Assembly. Where for any reason reference to the Secretary of State is considered necessary, we recommend that a joint decision of the Government of India and a majority of the non-official members of the Assembly, reached by discussion of a resolution, should be given the same degree of authority as similar decisions on legislative proposals, and that the principle we have stated in paragraph 15 should be applied in these cases also.

17. We now revert to the question of delegation, considered as a supplementary aspect of the scheme of Reform. We are in full sympathy with the opinion expressed by the authors of the Joint Report, that previous sanction to decisions taken in India should be required in fewer cases than in the past, and that in some matters it will suffice in future if the Secretary of State asserts his control by means of a veto if necessary. Delegation of powers is so much a matter of technical detail that we consider our function to be confined to the duty of laying down guiding principles for its regulation. The basis of delegation that we recommend is as follows: that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required; but the Secretary of State should from time to time revise the list of subjects on which he requires such previous consultation, and inform the Government of India accordingly. Our recommendations would apply to all projects, both legislative and financial, subject to the reservations that may be necessary for the proper discharge of the Secretary of State's Ministerial responsibilities. In regard to administrative questions as distinct from those involving legislation or finance, the special need for delegation in the sense applied above does not arise. The administrative powers of the Government of India in this respect are not limited by any formal restrictions; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative matters. It is clear that that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of pure administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals, and that a full understanding between London and Delhi would be reached by a free interchange of views.

18. We have stated our conclusions as to the extent to which the co-operative authority of the Government of India and the Legislative Assembly should be recognised, and the corresponding degree in which revision from Home should by constitutional practice be limited. As regards Local Governments, we have considered it to be beyond our province to explore the possible lines of devolution from the central to the local administrations which might eventually affect the Secretary of State's relations with the latter bodies. Developments in this respect are likely to vary according to the initial disparity and the different rates of progress exhibited in the several provinces; and we are reluctant to commit ourselves to a general forecast which the future might show to be not only vain but misleading. Consequently, in considering the relationship between the Secretary of State and Provincial Governments, we feel precluded from making any series of explicit suggestions which events might prove to be unworkable or possibly obstructive to reform. For the inauguration of the new system, the conclusions of the Committee on Functions afford in our opinion a sufficient guide to the relationship we have to consider; and we assume that during the earlier stages, at any rate, the Government of India will in the main continue to act as the intermediary between the Secretary of State and Local Governments. On that basis, it appears to us to follow from our general reasoning that in so far as

provincial action comes under the cognisance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.

19. We have been unable to make a full examination of the position of the Secretary of State in regard to the Civil Services in India; and we must content ourselves with recording our recognition of the weight of the views expressed by the authors of the Joint Report in their treatment of the matter. We desire that the recommendations in paragraphs 15 and 16 of the present Report should accordingly be read as subject to the necessary reservations on this head.

IV.

20. In approaching the main subject of our enquiry, we have necessarily dwelt on certain aspects of the Reforms Scheme on the Indian side, in order to throw into relief the changes in the Home Administration to which they point. The conditions of reform obviously postulate a change of atmosphere in the conduct of administration by the supreme executive; but it is in our view clear that to complete the structure at this end the need for something more than a change of atmosphere is imperative. We have endeavoured to show that the existing conception is that of graduated official control, amenable in some respects to popular advice, but in broad outline extending in an unbroken series from the subordinate executives in India to the Secretary of State in Council. That series is no longer to be maintained in India, and we cannot justify the retention of its essential features in London. In so far as the new co-operation between the Government of India and representatives of the people finds effective expression in the manner we have indicated, and in so far as obstacles to further expansion are removed by a wide delegation of powers from home, the case for expert control breaks down. Equally to mark the disappearance of official control from the expert standpoint at home, and to establish the undivided responsibility to Parliament of the Secretary of State, we advocate as our first principle the abandonment of the corporate idea of the Secretary of State in Council. Our recommendation is, therefore, that the powers and authority with regard to the government of India now vested in the Secretary of State in Council should be transferred to the Secretary of State, the date of transfer to be determined by Order of His Majesty in Council. We presume that an Order giving effect to our recommendation, if it is accepted, would be issued as an immediate consequence of the passing of the Government of India Bill into law. It is unnecessary, we trust, to explain that our conclusion implies no failure on our part to appreciate the great services rendered by the Council of India in the place they have hitherto filled in the scheme of Indian administration. It will also be superfluous to labour the subsidiary reasons which have helped us to form our judgment, if we have succeeded in making our main argument clear.

21. Our recommendation has not been made without a close regard to the consequences which will follow if it is carried into effect. In the first place, we have satisfied ourselves that there is no constitutional function of the Secretary of State in Council which could not equally well, under the new conditions, be discharged by the Secretary of State. We propose that he should retain the statutory position described in the words quoted in the earlier part of this Report, and should modify it by whatever process of constitutional growth appears to him best to fit the circumstances. Our second consideration is one of practical expediency. We have distinguished in regard to the Secretary of State two spheres of action: one in which he has hitherto exercised in Council executive functions which henceforward, in our view, he will leave more and more to the Government of India acting in co-operation with the Legislative Assembly, and the other in which he will retain Ministerial control. The latter presents no difficulty; the supremacy of the Imperial Government must of course remain unquestioned. In the former case, the position would be equally clear if the Government of India were constitutionally amenable to the will of the Assembly. But we must bear in mind that that state of affairs is not yet in view. The Secretary of State will still have to decide on a number of questions, on many of which he will not wish to invoke the full authority of the Cabinet. If in

such matters he finds himself compelled to overrule the Government of India, he will be likely to incur the charge of ignoring, on his own personal initiative, the collective weight of trained administrative judgment. We have also to remember the variety and complexity of Indian problems. The solution that we propose is to provide him with a collective body of continuous and expert advice. We have no doubt whatever that, in the absence of such a body, the Secretary of State would take the fullest possible opportunity of securing in various quarters consultation of the most valuable kind. But the advice he would obtain would always remain informal, and the special difficulty of his position would not be met. The body that we suggest would be established on a statutory basis, with a fixed tenure of office, and its composition would be designed to afford the Secretary of State the kind of advice called for by the circumstances which we hold to justify its creation.

22. An alternative scheme as regards the relations between the Government of India and the Home Administration has been put forward by our colleague, Sir James Brunyate, who has elaborated it in the statement appended to this Report. Briefly, his position as regards the Council of India, as we understand it, is that its retention, while it may not be defensible at some future stage when the Government of India have come more completely under the control of popular representatives in India, is proportionately defensible in so far as that Government remain an executive wholly responsible to the Secretary of State. During this period he would retain the Council of India as the normal complement to the Government of India, with its existing statutory powers other than the right of financial veto, but with definite limitations of its area of functions. As the focus of the Government of India's responsibility shifted from the Secretary of State to the Legislative Assembly, the need for the corporate control of the Secretary of State in Council would lapse. We have given careful consideration to the proposal, and we desire to say that it was fully in accordance with our wishes that Sir James Brunyate has placed it on record as an alternative to our recommendations. We reiterate, however, our opinion that the present is the most opportune time, both for political and constitutional reasons, for marking the inception of the Reforms by a definite and unmistakable change in the Home Administration of India.

23. As regards the functions of the body that we propose should be established, we would mark its distinction from its predecessor by the provision that the Secretary of State should refer such matters as he may determine to the Committee for its advice and assistance, and may provide by regulations for the manner in which the business of the Committee may be conducted. There need, however, in our opinion, be little apprehension that its activities will be desultory, or that the tender of advice will not be regulated by clear and consistent principles. The substitution, for example, of previous consultation between the Secretary of State and the Government of India for the previous sanction of the Secretary of State in Council indicates one line of work which would naturally come before such a Committee. It would thus in all probability develop a routine which will doubtless take over much of the technique evolved in the long term of the Council's existence, though without some of the statutory prescriptions as to procedure which are found to be inconvenient. We anticipate that it will prove useful to retain the principle of discussion in sub-committees, in order to provide the continuous basis of collective advice, particularly on technical matters, which has proved so helpful in the Committees of the Council of India, and which was endorsed in regard to finance by the high authority of the Royal Commission on Indian Finance and Currency which reported in 1914.

24. The functions we have outlined for the Advisory Committee will naturally determine its composition. We propose that the number of members should be fixed by statute at not more than twelve and not less than six; that the members should be appointed, as in the case of the Council of India, by the Secretary of State; and that subject to the provision suggested below in regard to a minimum of Indian members, he should have full discretion in his selection. The knowledge to which he would turn in the Advisory Committee would be that most naturally supplied by members with recent official experience in India; and we contemplate that with the reservation just named the majority of the Committee will possess such a qualification. In these cases we do not consider it advisable to incur the risk of limiting the field of appointment by making statutory the requirement laid down in sub-section (3) of section 3 of the Government of India Act as to the qualification of recent service or residence in India in the case of nine members of the Council

of India. We assume as a matter of course that the Committee would include a certain number of Indian gentlemen. The new conditions appear to us to accentuate the desirability of securing the services of some Indian members who would be accepted in India as truly representing Indian political thought. To this end we recommend that not less than one-third of the members of the Committee should be persons domiciled in India selected by the Secretary of State from a panel of names submitted by the non-official members of the Indian Legislative Assembly and the Council of State. We consider that a statutory provision to this effect would be appreciated in India as signalising the spirit of co-operation between the Secretary of State and representative elements of Indian public opinion. Our recommendation leaves it open to appoint Indians representing special interests, or possessing administrative experience, in addition to those selected from the panel.

25. We recommend that the tenure of office of all members should be fixed by statute at five years. We consider that this period represents a tenure which would be sufficiently attractive to men of high administrative qualifications, and at the same time would afford the Secretary of State the full benefit of the members' experience, while ensuring that that experience should be reasonably in touch with current Indian conditions. There would, however, be an understanding that an Indian member would not necessarily bind himself, by accepting appointment to the Committee, to remain in office for the full term of service. In our opinion, provisions for the re-appointment, resignation, and removal of members, which are given statutory expression in section 3 (5), (6), and (7) of the Act, might more conveniently be met by rule-making powers. We think, however, that section 4, which provides that no member of the Council of India shall be capable of sitting or voting in Parliament, should be amended so as to apply to members of the Advisory Committee. Our reason is that the close connection which we contemplate the members will have with the administration of the Secretary of State is incompatible with the duties of a member of either House of Parliament, and that combination of the two functions might in practice be found to lead to grave inconvenience. On full consideration of the status of the Committee and of the nature of the work which the members will be called upon to perform, we recommend that the salary of each member should be 1,200*l.* a year. We propose that all Indian members, in view of the fact of their domicile, should receive a subsistence allowance of 600*l.* a year in addition to the salary of 1,200*l.*[1]

26. We make two further suggestions which find a natural place at this stage of our exposition, although they are not directly dependent on the disappearance of the Council of India. The first is, that the signification of His Majesty's assent to reserved Bills of the Indian Legislature and of the local legislatures should be made by His Majesty in Council, instead of through the Secretary of State in Council as hitherto, and should be notified by the Secretary of State to the Governor-General; and that the disallowance of Acts of the Indian and local legislatures, and of Regulations and Ordinances, should similarly be signified by His Majesty in Council. We should explain that we make this suggestion irrespective of our conclusion as to the Council of India, in order to mark the new status of Indian legislation; but for the sake of clearness we have preferred to state it after our proposals for the remodelling of the Home Administration, as it directly implies a small modification of the existing system.

27. Our second suggestion is that the Secretary of State should regulate by executive orders the mode of conduct of correspondence between the India Office and the Government of India and Local Governments. The issue of orders and communications has hitherto been regulated by the somewhat meticulous procedure prescribed by the Act of 1858; and we do not think we need justify our proposal to liberate the India Office from the restrictions imposed by a bygone age and to place it on the same footing as other Government Departments in this respect. There may be other portions of the existing Act to which the spirit of this recommendation would equally be applicable.

28. To sum up in brief our recommendations: we propose the transfer of responsibility from the Secretary of State in Council to the Secretary of State, and the establishment of an Advisory Committee of from six to twelve members, appointed by the Secretary of State, of whom not less than one-third should be

[1] These figures are reckoned on a pre-war basis.

Indians selected from a panel of names submitted by the non-official members of the Indian Legislature; members of either House of Parliament to be ineligible for appointment to the Committee; the tenure of office to be fixed at five years, and the salary at 1,200*l.* a year, with an additional allowance of 600*l.* a year in the case of members domiciled in India. The statutory changes which appear to us to be entailed by our recommendations are as follows. For section 3 of the Government of India Act, 1915-16, would be substituted a clause providing for the establishment of the Advisory Committee. Sections 5 to 14 inclusive would be omitted, and section 21 would terminate with the words "shall be subject to the control of the Secretary of State." The words "Secretary of State in Council" would be replaced by the words "Secretary of State," with any other consequential alterations throughout the remainder of the Act, and throughout the Government of India Bill which is now before Parliament.

V.

29. We proceed to the subsidiary heads of our enquiry, of which the first is the organisation of the India Office establishment. We have interpreted this reference to imply that we should indicate general lines of reconstruction, without entering into technical questions of departmental arrangements. We are satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner for India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for the transfer to their control of any other agency business, such as that transacted by the Indian Students Department.

30. As regards modifications in the system of the recruitment of the higher administrative staff of the India Office, we find difficulty in adopting a suggestion which appears in the Joint Report, that as one alternative the India Office staff might be recruited from the Indian Civil Service. One serious objection is that a preliminary period of training, undergone in India before the new recruit enters on his duties at the India Office, though it would undoubtedly give his work the initial stimulus of local and freshly-felt experience, would inevitably have to be general and somewhat indefinite in character, and would tend to lose the usefulness of its effect just at the time when he would begin to take a responsible part in the administrative work of the Office. Our general attitude towards the question is governed by the fact that authoritative Indian experience will be represented in the Advisory Committee, and will not be supplemented on the same plane by members of the permanent establishment. We draw a clear distinction between the advice tendered to the Secretary of State collectively by a body of the status we have in view, and that submitted to him individually by his subordinates. In the case of the latter, we regard personal knowledge of Indian conditions as a valuable adjunct rather than as an essential qualification. The evidence before us has indicated the great value of bringing the superior officers of the Home and the Indian Administrations into close touch with each other under daily working conditions, and we presume that the system of deputing these officers, on special duty and with definite objects, from one country to the other will be continued and possibly expanded. So far, we have been dealing more particularly with the case of members of the India Office staff. As regards members of the Indian Services, the position is easier. The terms of leave and deputation from India make them more readily available for interchange; they are not hampered in any special sense by ignorance of local conditions; and experience has already proved, in the temporary adjustment of the India Office staff to war conditions, that they can be employed in the Office with success. The widening of their experience in regard to the political and Parliamentary functions of the Home Administration and its relations with other Departments cannot fail to be of very considerable value. At the same time we fully realise that the work of the Home Administration requires a special outlook and a special technique which can only be acquired by a continuous training under the traditions of the Home Service.

For this reason, and also to avoid the effect of discouragement on the permanent staff recruited at Home, we would deprecate any systematic reservation of higher appointments in the India Office for members of the Indian Services. To sum up our conclusions, we are of opinion that it is desirable that from time to time the Secretary of State should depute members of the India Office staff on special duty in India, whenever convenient opportunities present themselves; and should also employ officers of the Indian Services, or non-officials versed in Indian administration, in the superior work of the India Office, but ordinarily on a temporary footing or as supplementary to the permanent establishment. We do not, however, think that it is desirable or possible to arrange any formal system of interchange between members of the India Office and the Indian Services.

31. We can readily understand the aspiration of Indians to be admitted to a more intimate part in the Home Administration of Indian affairs. In considering how best to provide a legitimate opening, we have to bear in mind that representative Indian opinion will find its place on the Advisory Committee, and that the permanent staff requires certain qualifications of a kind to which we have already referred. Administrative efficiency, no doubt, will be progressively forthcoming among the Indians who will be available for employment at the India Office under the general scheme of interchange that we have outlined above, and we anticipate that full opportunity will be taken to utilise their services freely with those of the British representatives of administrative work in India. We do not consider, however, that it would be in the best interests of the Indian Empire to create special facilities, whereby appointments in the ordinary administrative line of the India Office might be claimed as a matter of privilege by Indians not necessarily possessing the qualifications which would enable them to gain access to the Office through the channels we have already indicated. There is, nevertheless, a special force in the argument that Indians should be able to take their place in the higher control of the Office, as distinct from the advisory functions of the proposed Committee. We are of opinion that it would be advantageous if occasion were now and then taken to appoint an Indian to one of the posts which stand as intermediary between the Secretary of State and the Heads of Departments, and we should be willing to see an additional appointment of this kind created, to be filled by an Indian, provided that there were other grounds which could reasonably be held to justify such an addition to the establishment.

32. We have now to consider what alteration should be made in the present system under which the whole of the charges on account of the India Office are payable from Indian revenues. We understand that it is the intention of His Majesty's Government that the salary of the Secretary of State should, like that of all other Ministers of the Crown, be defrayed from Home revenues and voted annually by Parliament. Our main principles have already led us to distinguish the political and administrative duties of the Secretary of State, acting as a Minister, from the agency business conducted by the India Office on behalf of the Indian authorities. It appears to follow as a general conclusion that the charges incidental to the former should be met from British revenues. They form a normal part of the cost of Imperial administration, and should in equity be treated similarly to other charges of the same nature. We include under this head the charges on account of the Advisory Committee, which is constituted to assist the Secretary of State in the performance of his Ministerial responsibilities. Charges on account of agency work would naturally continue to be borne by India, in whose interests they are incurred. The exact apportionment is clearly a matter of technical detail which is best left for settlement between the India Office and the Treasury. The principle that we would lay down is that, in addition to the salary of the Secretary of State, there should be placed on the Estimates (*a*) the salaries and expenses (and ultimately pensions) of all officials and other persons engaged in the political and administrative work of the Office, as distinct from agency work; (*b*) a proportionate share, determined with regard to the distinction laid down in head (*a*), of the cost of maintenance of the India Office; the exact sum payable under heads (*a*) and (*b*) to be determined by agreement between the Secretary of State and the Lords Commissioners of the Treasury from time to time. Any arrangement made under this scheme would supersede the adjustment agreed to between the India Office and the Treasury as a result of the recommendations of the Royal Commission on Indian Expenditure, over which Lord Welby presided. The India Office building and site and other similar property paid for in the past by Indian revenues, and now held by the Secretary of State for India in Council, would continue to be Indian property. The statutory change necessary to give effect to our recommendation is provided in clause 22 of the Government of India Bill.

33. In considering in their new aspect the functions of the Secretary of State, more particularly in regard to his Parliamentary responsibilities, we have not been able to leave out of account the proposal made in the Joint Report for the appointment of a Select Committee of the House of Commons on Indian affairs. The object of the Select Committee is stated to be to ensure in Parliament a better-informed and more sustained interest in India, and its composition is to be limited to the House of Commons, on the ground that it is in that House that effective control over Indian administration will, in the view of the authors of the Report, be exercised by means of the debate on the Estimates. We are of opinion that these objects would not be furthered by the appointment of a Select Committee. We do not believe that such a step would usefully contribute towards the creation of a well-informed opinion on Indian affairs. Members of the House of Commons are already overburdened by the heavy and ever-increasing duties in connection with Home affairs, to which their constituents not unnaturally expect them to give priority. If Parliamentary interest in India is focussed in a Select Committee, effective discussion and control might be confined within even narrower limits than at present, and criticism of Indian administration from the independent standpoint will indirectly be discouraged. But in any case we feel that the proposal is open to a far more fundamental objection. We believe that the appointment of such a body might encourage a tendency to interfere in the details of Indian administration, and that the result might militate against the modification of control which it is the object of the Reforms to secure. In fact, we hold that the argument for a Select Committee, however strong it might have been in the past, inevitably loses weight in proportion as India progresses towards responsible government.

34. As it is clear that the form of the Home Administration of Indian affairs should not be given a greater rigidity than the forms of government which are to be granted in India as the first step towards full responsibility, we assume that the statutory commission of enquiry will include within the scope of their review the range of subjects with which we have dealt in our Report.

VI.

35. For convenience of reference we summarise our recommendations as follows:

Relations between the Home and Indian Administrations.

(i) Save in the case of absolute necessity, legislation should not be certified for enactment by the Council of State without previous approval of its substance by the Secretary of State on the ground that its enactment is essential in the interests of the peace, order, and good government of India (para. 14).

(ii) Where the Government of India are in agreement with a majority of the non-official members of the Legislative Assembly, either in regard to legislation or in regard to resolutions on the Budget or on matters of general administration, assent to their joint decision should only be withheld in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly (paras. 15, 16).

(iii) As a basis of delegation, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases in which the previous sanction of the Secretary of State in Council has hitherto been required (para. 17).

(iv) In the relations between the Secretary of State and Local Governments, the principle should as far as possible be applied, that where the government are in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail (para. 18).

(v) Assent to, or disallowance of, Indian legislation by the Crown should be signified by His Majesty in Council (para. 26).

The Home Administration of India.

(vi) The powers and authority now vested in the Secretary of State for India in Council should be transferred to the Secretary of State (para. 20).

(vii) The Secretary of State should be assisted by an Advisory Committee, to which he shall refer such matters as he may determine; and he may provide by regulations for the conduct of business of the Committee (paras. 21, 23).

(viii) The Advisory Committee should consist of not more than twelve and not less than six members, appointed by the Secretary of State (para. 24).

(ix) Not less than one-third of the members of the Committee should be persons domiciled in India selected by the Secretary of State from a panel of names submitted by the non-official members of the Indian Legislature (para. 24).

(x) The tenure of office of members of the Committee should be five years (para. 25).

(xi) Members of either House of Parliament should be ineligible for appointment to the Committee (para. 25).

(xii) The salary of members of the Committee should be 1,200*l.* a year (para. 25).[1]

(xiii) Indian members of the Committee should receive a subsistence allowance of 600*l.* a year in addition to salary, in respect of their domicile (para. 25).[1]

(xiv) Statutory provision should be made for recommendations (vi) to (xiii) inclusive.

(xv) The Secretary of State should regulate by executive orders the conduct of correspondence between the India Office and the Governments in India (para. 27).

The Organisation of the India Office Establishment.

(xvi) Action should be taken with a view to the transfer of the agency work of the India Office to a High Commissioner for India or some similar Indian Governmental representative in London (para. 29).

(xvii) No formal system of interchange of appointments between members of the India Office and the Indian Services can be recommended; but deputation between the two countries should be encouraged (para. 30).

(xviii) Occasion should be taken now and then to appoint an Indian to one of the posts intermediary between the Secretary of State and Heads of Departments (para. 31).

The Apportionment of the Charges of the India Office between Home and Indian Revenues.

(xix) The charges on account of the political and administrative work of the Office should be placed on the Estimates, those on account of the agency work of the Office being defrayed from Indian revenues; the apportionment to be determined by agreement between the India Office and the Treasury (para. 32).

(xx) The Committee are not in favour of the proposal to establish a Select Committee of the House of Commons on Indian Affairs (para. 33).

36. Our colleagues Sir James Brunyate and Professor Keith find themselves unable, for the reasons stated in the memoranda which they append respectively to this Report, to agree with us in our main conclusions. They have been good enough, however, to place at our disposal the valuable benefit of their assistance in framing our Report, and we desire to record our indebtedness to them for their ready co-operation and for many helpful suggestions which have greatly contributed towards a clearer statement of our objects and proposals. Mr. Basu's views also differ in some material parts, and he prefers to state them in a separate note. Mr. Gosling was prevented by pressure of other work from taking part in the consideration of the Report.

37. We desire also to acknowledge the valuable aid rendered by our Secretary, Mr. W. R. Gourlay, C.I.E., I.C.S., Private Secretary to the Governor of Bengal, and to express our thanks to Lord Ronaldshay for his ready consent to our retaining Mr. Gourlay's services through the summer. He was ably assisted by Mr. S. K. Brown, of the India Office, whose special experience was of great value to us in considering the working of the India Office and its relations with the Government of India. We cannot speak too highly of the assiduity and capacity displayed by both these gentlemen during the conduct of the enquiry and also in the preparation of this Report.

[1] These figures are reckoned on a pre-war basis.

(Signed) CREWE.
AGA KHAN.
ESHER.
G. P. COLLINS.
G. E. MURRAY.
W. ORMSBY GORE.

W. R. GOURLAY,
Secretary.
21st June 1919.

Minute of Dissent by Sir James Brunyate.

[NOTE.—*The references, except where otherwise stated, are to the Majority Report.*]

I.—PRELIMINARY.

The essential recommendations of my colleagues comprise:—

(*a*) A scheme for regulating the future relations between the Secretary of State, the Government of India, and the Indian Legislative Assembly (Majority Report, Part III.).

(*b*) A proposal to replace the Council of India by an "Advisory Committee" (paras. 20–23).

I regret to have to dissent from both these principal recommendations. Some minor points of difference will be briefly noticed later.

II.—RELATIONS BETWEEN THE SECRETARY OF STATE AND THE GOVERNMENT OF INDIA.

2. It is most important, and not at all easy, to arrive at the resultant effect of the several recommendations which together constitute this "scheme of relations," as I may conveniently call it. The best opinion I can form is that in the near future the only operative portion of the scheme will be the proposal that the power of certifying Bills for passage in the Council of State should be imposed upon a higher authority and limited by a narrower formula. The Bill as drafted [clause 20 (4)] allows the Governor-General in Council to certify on the ground of a measure being "essential for the safety, tranquillity or interests of British India"; my colleagues would require the Secretary of State's express authority for certification and would also limit the discretion of the Secretary of State himself by confining such authorisation to cases in which "the legislation proposed is essential in the interests of the peace, "order and good government of India." Outside legislation—indeed, everywhere outside this single aspect of legislation—the proposals will, I think, for some time be merely nugatory: absolutely so as regards expenditure and very nearly so as regards matters of administration. Any appearance of wider immediate result will be due, not to the scheme, but to the favourable atmosphere of reform. Ultimately, no doubt, there may be further consequences, for there are implications behind the principles stated by my colleagues which will certainly bear fruit. But if the question be: "What effect will these proposals have during the lifetime of the first "Indian Legislative Assembly summoned under the new Act?" I think the answer must be: "As regards legislation they imply the grant to the Assembly of power "to block all Government of India legislation, including taxation Bills, unless the "Secretary of State intervenes, which it will be very hard for him to do; as regards everything else—*nil.*"

My primary objection, then, is that whether my colleagues' views as to certification are right or not (I will return to this presently), a scheme which is ineffective except as regards this single point does not cover sufficient ground.

3. The limited effect of the scheme is mainly due to the inconsistency of two of the leading recommendations. The Report very properly insists on prior reference to the Secretary of State in regard to important matters as the normal rule (para. 17). But this cuts right across the cardinal principle with which the report sets out (para. 13), *i.e.*, the proposition that when the Government of India and the Legislative Assembly are in agreement their joint decision should "ordinarily[1] prevail." This proposition can have no practical significance if no major proposal, whether in the form of a Bill or of a scheme of expenditure included in the Budget, is to be put before the Assembly until the Secretary of State has already agreed. Naturally, if the Secretary of State, the Government of India and the Legislative Assembly are all of one mind as regards a particular proposal, that proposal will go through. It needs no recommendation of ours to establish that.

The same difficulty arises even with private Bills. The private Member has this advantage, that he can bring his legislative project within the cognisance of the

[1] The word "ordinarily," if interpreted strictly, makes the proposition innocuous enough. But as will be seen from the repeated use of the formula about "peace, order, and good government" (paras. 14–16), much more than this is intended.

Assembly without asking leave of the Secretary of State. But the Government of India, if it is to refer all its own measures to the Secretary of State, must equally consult him before accepting a private Bill, unless this method of legislation is to be deliberately encouraged as superior to the normal procedure, by which most of the law-making is done on the initiative of the responsible executive. The same applies to private members' Resolutions proposing important schemes of expenditure, if such motions are to be permitted at all. Occasionally, perhaps, as the control in purely administrative matters is quite unsystematised, the Government of India might accept a private member's Resolution on an administrative question about which the Secretary of State might feel that he should have been consulted first, but nothing of much significance is to be expected in this direction.

4. The cases, therefore, in which my colleagues' recommendations might become operative are not those in which the Assembly and the Government of India are in agreement, but those in which they are in disagreement, *i.e.*, where a majority of the Assembly rejects a Government proposal or carries a motion which the Government cannot accept. If, however, a motion carried against the Government relates to administrative matters or to expenditure, it is intended that it should "continue to be advisory in character" (para. 16), *i.e.*, the Government of India can disregard it. We are left, therefore, only with disputed legislation to consider. If the Government of India disapproves a private Member's Bill carried by the Assembly, it can get the Bill rejected when it comes to the second Chamber (the Council of State), in which the Government will command a majority. If, however, the Assembly rejects a Government Bill, *e.g.*, a taxation measure, and it is important to push it through, the only remedy is certification, and my colleagues' recommendations become effective in the manner already stated. That, as it seems to me, is the one class of case where their proposals lead at once to a definable practical result.

5. It may be replied, of course, that the recommendations should also be read in connection with the later proposal (para. 17) that there should be further relaxation of the Secretary of State's control, giving the Indian authorities more administrative liberty, wider financial powers, and permission in some stated classes of legislation to dispense with any previous reference to the Secretary of State. Little or no indication, however, is offered of the intended scope and methods of this further delegation. If it is merely delegation of the ordinary type, the conclusions reached above are not, I think, impaired. If it is the kind of delegation or devolution by which the Secretary of State divests himself of all continuous interest in entire branches of administration, then I agree that we are on the threshold of real political change. It is on such lines that I have proceeded in the "Statement" following this Minute, and I should be glad to think that in doing so I was interpreting the real views of my colleagues.

6. I now return to the question of certification, as to which my submission is that it will be better to adhere to the provisions of the Bill [clause 20 (4)].

Certification is a very anomalous procedure; it can only be most sparingly and reluctantly employed; but it must have a recognised place in the Reform system and should not be regarded as something catastrophic and for practicable purposes inadmissible. Otherwise, as regards all Government legislation, instead of handing over control gradually we shall have handed it over totally. In a word, the certification procedure must not be made unworkable. The natural checks on its employment will be severely deterrent in any case.

I demur to my colleagues' recommendation because it tends, I consider, to make it nearly impracticable to resort to certification at all. It is proposed whenever certification is required to transfer the *venue* to Whitehall, thus raising what might be only a passing crisis of local politics to the dimensions, it may be, of an Imperial issue, imposing on the Secretary of State a most invidious function,[1] and bringing him into relations of almost personal conflict with the Legislature in India. It is further proposed to limit his discretion (*i.e.*, the discretion of His Majesty's Government) by a rigorous formula the application of which, on each particular occasion, is likely to be very keenly criticised in India.

The problem of getting essential but disputed legislation passed under the new conditions is very perplexing, and likely to give trouble whatever solution is adopted.

[1] In the scheme below (para. 21 of the Statement) I have myself proposed to impose this function on the Secretary of State in "Group B" cases. This has its own justification in the special conditions contemplated but for the reasons stated above is, as I recognise, a point of possible criticism. I do not propose to limit the Secretary of State's exercise of this reserved power by any formula.

But I am sure that the best hope of accommodation lies in dependence upon the discretion of the Government on the spot, which alone can appreciate the local situation and measure what it stands to lose by a conflict with its Legislature. This is what is proposed in the Bill in the analogous provincial cases (legislation and refusal of supplies) and what my colleagues themselves propose for the Government of India in regard to those questions of finance which are not presented to the Assembly in the form of legislative projects.

7. A further objection to the scheme of the Majority Report is that it is not as a whole so devised as to facilitate subsequent "progress by successive stages" in accordance with the policy of the announcement of 20th August 1917 which is also the governing idea of the Montagu-Chelmsford Report. I need hardly elaborate this.

8. I dissent, then, from the scheme of the Majority Report as it stands on the grounds (*a*) that the proposals in regard to certification are likely to enhance gravely the difficulties of passing essential but disputed legislation; (*b*) that in other respects (*i.e.*, in regard to financial action not requiring legislation) the scheme will be of little or no effect; and, generally, (*c*) that the proposals, while not entirely suitable as an initial scheme, are also defective in that they do not lend themselves to a process of regulated expansion later.

There is also a special danger in the use of statements of general principle as a substitute for a concrete scheme. The principle stated is apt to be regarded as a pledge, and a pledge of indefinably wide application. I may perhaps dwell on this for a moment.

9. For example, it is laid down as a principle (para. 13) that the Secretary of State should not ordinarily[1] interfere with a joint decision of the Government of India and its Legislative Assembly. I have already shown that, on the Committee's postulate as to "previous consultation," this statement of principle is not capable of significant practical application. It is only valuable, therefore, if at all, as a political pronouncement, a "flag." Let such a pronouncement go forth with the authority of His Majesty's Government, and the politically minded Indian will demand, with much cogency, that the system of prior reference to the Secretary of State, which makes the pronouncement of principle inoperative, should be swept away. But this, of course, is not what my colleagues intend.

The principle of deference to joint opinion has, I think, an undeniable validity within a certain range, and so has that of prior reference to the Secretary of State. But clearly they cannot both operate together. As I have indicated in para. 14 of the Statement attached there are certain domestic matters of every-day administration where the Legislature and the Government of India already work helpfully together, and ought soon to do so still more; and the Secretary of State has little ground for systematic interference. It appears legitimate, therefore, in this area, to dispense with previous reference to the Secretary of State in order to give scope for political experiment. But in other matters the mere fact of agreement between the Government of India and the Assembly, though it would certainly add to the weight of the joint opinion, and would be embarrassing to the Secretary of State if he considered the joint opinion to be wrong, ought not, at this initial stage of reform, to be treated as raising anything like an efficient presumption against his intervention. In such matters, therefore, his right to intervene effectively must not be impaired by postponing all opportunity for the expression of his views till the Government of India and the Legislative Assembly stand fully and publicly committed to action which he ought not to support. He should be a consenting party from the first, and in this range of subjects, therefore, opportunity cannot be afforded for the operation of the principle of deference to the joint opinion as well.

10. Again, the recommendation in paragraph 17 that the "principle" of previous consultation should be substituted for that of previous sanction may amount to nothing more than a courteous acknowledgment of the Government of India's important status and heavy responsibilities as the authority on the spot; or, at the other extreme, may be taken to imply the really remarkable proposition that the Secretary of State as representing Parliament is not constitutionally entitled to issue direct orders to the Government of India, who merely represent him. I have assumed that for the time being this pronouncement of principle will have no practical result

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[1] *See* footnote to para. 3 of this Minute.

and that the Governor-General in Council will defer in future to any expression of the Secretary of State's considered views as he does at present. But though the immediate intention may be limited to securing somewhat greater weight for the recommendations of the Government of India, it will soon be claimed, and justifiably, that His Majesty's Government have, in fact, acquiesced in a fundamental constitutional change in the existing relations between themselves and the Government of India. The "rule of obedience," *i.e.*, section 33 of the Government of India Act as it now stands, lays down that " . . . . the Governor-General in Council . . . . is " required to pay due obedience to all such orders as he may receive from the Secretary " of State." In what sense can that stand, if it is now to be laid down as a general principle that "consultation" is to take the place of an application for "sanction" in all those cases in which it has hitherto been the practice for the Government of India to ask for and receive the orders of the Secretary of State?

My own view is that it is better to speak of "previous sanction" when that is what is really meant and to dispense altogether with the requirement of previous reference to the Secretary of State when it is desired that the Government of India, in co-operation with the Indian Legislature, should have real independence of action. This is the line taken in clause 8 (3) of the Bill with regard to the reference of proposed provincial legislation to the Government of India, though the relationship of the quasi-popular Local Governments to the Government of India, under the general arrangements contemplated by the Reforms Scheme, will not approach that degree of direct subordination which is still to characterise the constitutional relationship between the Government of India and the Secretary of State.

III.—The Council of India.

11. I now turn to the recommendation to reduce the status of the Council of India. Its intention, broadly, is that the concept of "the Secretary of State in Council" should disappear altogether and that, though an Advisory Committee is to remain, the Secretary of State should be free to consult or not to consult it as he may please.

I will not deal with this question here at any length, as such alternative suggestions as I can offer on the subject are set forth in my separate Statement. The Committee's recommendation is decisively opposed to the weight of the evidence. This was, no doubt, somewhat limited in range, but included such witnesses as Mr. Chamberlain and Sir Courtenay Ilbert, names which, I think, go far to dispose of the rather theoretical[1] contention that the extinction of the Council is necessary to establish the Secretary of State's responsibility to Parliament. The proposed Advisory Committee will itself be open, in large measure, to the objections taken to the present system, while, as my colleague Mr. Basu has shown, the lowering of the status of the Council may do much to impair its practical utility. Again the withdrawal of the advisory body's statutory relationship of responsible though subordinate association with the Secretary of State seems somewhat specially inopportune in view of the very wide rule-making powers to be conferred by the Bill. The new Act, while it remains in being, will be India's basic constitution, and there ought to be some provision for continuous watch on the process by which its provisions will secure practical effect and interpretation.

Finally, though I do not suggest that this is the attitude of my colleagues themselves, there can be no doubt that the demand for the abolition of the Council derives its real strength from those who will see in it a pledge of the Secretary of State's early withdrawal from the exercise of his statutory function of superintendence, direction, and control. It is associated, in fact, with the desire to accelerate the pace of reform. My own standpoint is that in some directions a real control must be retained for some time longer, and at least as long as the Government of India remains on a "bureaucratic" basis; that, apart from actual control, the continued influence of the Secretary of State as a corrective and educative factor is still required in the period of probation and political education now ahead of us; and that the Government of India itself, while still "bureaucratically" constituted, cannot be left unsupported in its relations with its Legislature without becoming dangerously weakened. My main reason for wishing to keep the Council intact is that the intention to maintain this control and influence, under proper limitations, and to accord the Government of India, when necessary, the legitimate support of Parliament through its representative the Secretary of State, may not seem to be placed in doubt.

[1] The argument here alluded to has, I think, a certain force if the Council's right of financial veto is retained. But on the whole I think it ought to go—*see* para. 28 (1) of the Statement.

IV.—Subsidiary Matters.

12. I may now refer to the summary of recommendations in para. 35. Those numbered (i), (ii), (iii), (vi) and the first part of (vii) are covered by what has already been said. No. (iv), though guardedly expressed, belongs in effect to the same category. In all other respects I am in general agreement with my colleagues, but certain points may be noticed:—

(*a*) No. (vii). Rules under the Act would be more suitable if the Council is retained; similarly as regards recommendation No. (xv).

(*b*) No. (xvi). (*See* paragraph 29 of the Report.) I agree to the principle that the Government of India should have its own organisation in London for the transaction of agency work, and that a beginning should be made by the transfer of the Stores Department. But I think we should proceed carefully at the outset. In particular, I would certainly not split up the Accountant-General's work at the present stage. The fact, for example, that an officer subordinate to the Secretary of State disburses pensions for which India pays has no bearing whatever on questions of pension policy, whether as regards the general rules or individual cases; Indian independence of London would gain nothing by the transfer of this purely ministerial work, while there would be a clear loss in economy and efficiency of control.

It has to be borne in mind, as regards all such proposals, that the India Office, allowing for the presence of the Council, is strong in higher supervisory personnel, and is likely to remain so for some time, whereas the infant Agency will be very weak in that respect. But if the Secretary of State and the Government of India are content to feel their way in this matter, discouraging any jealous aloofness as between the India Office and the Agency, I think the principle recommended in the Report deserves our support.

(*c*) No. (xx). I should have been glad if our Committee had found it possible to support the proposal to establish a Parliamentary Committee on Indian Affairs. I am anxious that during the period of experiment in progress towards self-government there should be every possible contact, both direct and indirect, between the political and administrative life of England and that of India.

(Signed) J. B. Brunyate.

21st June 1919

Statement by Sir James Brunyate.

[*Explanatory Note.*—The general scheme suggested below was submitted in outline to my colleagues after their decisions in regard to the Council of India had been taken, and was duly considered and rejected, a definite preference being reaffirmed in favour of the conclusions already reached. There seemed, however, to be a general wish that the ideas which I had put forward should be placed on record and made accessible. I have therefore supplemented my Minute of Dissent by the following "Statement," a term which I adopt in preference to "Minority Report," as indicating that in the absence of collaboration and criticism it does not purport to be more than a suggested basis for a final scheme.—J. B. B.]

Preliminary.

Our main function in this enquiry is to make suggestions as to the future relations between the Secretary of State and the Government of India, in regard primarily to central subjects, and also as to the complementary relations between the Government of India and the Indian Legislature, thus supplementing the work already done, in regard to provincial legislation and administration, by the Montagu-Chelmsford Report. Further, we are not wholly unconcerned in the provincial field. The Joint Report by the present Secretary of State and Viceroy traces the course of provincial affairs as far as the Government of India. It rests with us either to recommend that the decisions of that authority shall be final or to indicate the extent to which a right of entry must still be reserved to the Secretary of State.

The questions relating to the Council and the India Office generally would then become consequential, and might, I think, be readily handled.

2. After hearing the evidence and our discussions, I have come to the conclusion that we must go back more definitely and consciously to the pronouncement of 20th August 1917 and the Joint Report if we are to supply a scheme which will be sound in itself and congruent with the scheme of that Report. In fact one has learnt anew, in the various attempts at a solution, much the same lessons as the authors of the Report themselves. First, we must keep to the basic principle of progression by stages which is prominent in the 1917 announcement and insisted upon over and over again in the Joint Report. Next we must have responsibility defined. Thirdly, if a lower authority is invested with higher powers it must exercise them in closer association with its own legislature. The latter must gain what Parliament surrenders.

3. To these I must add two conditions which I at any rate cannot get away from: (*a*) The Secretary of State must retain an unqualified right and opportunity of control in certain directions, even though the area so administered be a progressively diminishing area; and when not visibly controlling in that area must at least be felt as a steady corrective and educative influence. (*b*) In like manner the Government of India, however much it desists from active intervention and control in provincial matters (this I take to be a matter outside our Committee's scope) must at any rate be so placed in relation to the Provinces that its wider experience and outlook, and its detachment from local interests, may be factors in the decision of all provincial questions of major importance. This would be secured in the main by retaining the present general practice of reference to the Secretary of State *through* the Government of India in all provincial matters which are not left to the final discretion of the Local Government.

4. These, then, are my postulates. The second and third, *i.e.*, the definition of responsibility and its distribution between the executive and the legislature, are peculiarly difficult to apply to the case of the Government of India. It is a definite finding of the Joint Report, and it seems to me an incontrovertible finding, that for the Government of India and at the present stage dyarchy will not do. We cannot get some scheme of central "transferred heads" embodied in the structure of the

Government of India Act, or say that such and such functions shall be ministerial functions, and that others shall be functions of an executive on the old lines. The Secretary of State can surrender control in a defined area, but not with the almost complete finality which is admissible under the provincial scheme. The Government of India can take up these controlling powers, but cannot share them with the Legislature in just the way in which the Governor with his Ministers will share responsibility for certain branches of the administration with the local Councils.

Nevertheless, though there can in the Government of India be no similar, no exactly parallel arrangements, I think we can at least proceed on some analogous line of progress.

5. I take it that in strictness the Secretary of State cannot in any direction divest himself altogether of the ultimate responsibility for superintendence, direction and control which the Act will still impose upon him. Parliament can always resume its concern in any matter and can always therefore call him to account. But different degrees of practical responsibility can be readily distinguished, and the first point for consideration would seem to be: to what extent can the transfer to a lower authority of power now exercised by the Secretary of State be accompanied by an equivalent transfer of responsibility? There seem to be three different methods of transfer, which may conveniently be referred to as devolution, delegation, and convention. For convention when placed on a statutory basis I suggest, as useful for present purposes, the term "conditional devolution."

Statutory Devolution for "Transferred Heads."

6. By devolution I mean a practically complete transference of power and responsibility together, such as is to be effected in the case of the provincial transferred heads. In this case, what Parliament surrenders, another popular body takes up; the process is strictly statutory; and the whole fruit of the experiment would be lost if the Secretary of State were still to remain continuously answerable to Parliament in any effective sense.

Methods and Limits of Delegation.

7. By delegation I mean the transfer of power in minor matters to a lower authority as to an agent, as for instance when the Secretary of State in Council confers on the Government of India and Local Governments a general authority to sanction administrative schemes costing not more than a stated annual amount without reference to him. Delegation so defined implies by its nature no corresponding shifting of any responsibility lying on the transferor. He simply takes the risk of letting someone else act for him. This places a limit upon the extent to which delegation can be carried: it must stop at the point at which control would otherwise begin to be lost. But its scope will vary in some degree with different Secretaries of State, and in practice the field of delegation never retracts, except at isolated points, while it does from time to time expand.

8. It should be noted that delegation in this sense has no necessary connection with a scheme of popular control. The scope and methods of the existing scheme of delegation could be improved and indeed ought to be improved, even if a scheme of reform were not under consideration at all. The existence of the Reform Scheme, however, emphasises the need for a decided advance in this field, if only to clear the ground for the questions which are intrinsically constitutional.

9. Delegation as a practical question is mainly a matter of relaxation of financial control. The limitations on the authority to legislate (such as the requirement of previous sanction to the introduction of legislation) are treated as a separate though prominent question in all these Reform discussions. In the case of the Local Governments, freedom in regard to administrative action has frequently been subjected to statutory restrictions (*vide* the Functions Report, para. 26), but the Government of India contemplate a comprehensive scheme of amending legislation which will do away with many of these special limitations (Despatch to the Secretary of State for India, No. 3, dated 16th April 1919, para. 9). As regards such matters of administration as have no legislative or financial aspect, there has been no attempt to define and systematise control. Indeed, it would hardly seem practicable to classify the multitudinous forms of possible administrative action from this standpoint. Some

casual restrictions, based on executive orders, apply in particular matters, and should be re-examined as they come to notice from time to time. In some branches of administration again reference to the Secretary of State is probably more frequent than in others. But otherwise, speaking broadly, and as far as any general rule can be stated at all, the Government of India have a free hand subject to reference to the Secretary of State in the case of any important new departure of policy. Most administrative schemes, however, have a financial bearing and are caught by the financial restrictions. To a large extent, therefore, financial delegation comprehends administrative delegation.

10. The work of re-examining the financial restrictions and preparing a scheme of delegation on broader lines is now, it is understood, being systematically undertaken by the Government of India. It is a heavy task, entailing, if it is to be adequately done, a study of many past references to the Secretary of State and the overhauling of the intricate codes. But it may be assumed that it will in due course be carried to completion and a new scheme of normal delegation promulgated. I have one suggestion, however, to make which may be serviceable for the special purpose of dealing with provincial expenditure.

11. The method of the present system is the application of pecuniary limits. No salary may be raised by the Government of India above such and such a figure; no administrative scheme sanctioned which costs more than such and such a recurring amount; and so forth. The effect of this arrangement, with a series of low limits as at present, is to bring before the Secretary of State every administrative departure of any significance, if it is one involving expenditure, but it also brings forward a great many other administrative proposals which have no significance at all —proposals, in fact, which everyone would admit to be fully capable of final decision in India. On the other hand, if the limits are high, their operation is likely to be very haphazard; it will become a mere chance whether an important matter escapes or has to be referred.

12. The difficulty is not a new one, and no one has yet discovered more efficiently selective criteria than those hitherto employed. The only solution I see is to trust some authority in India to make the selection for us. I would require any scheme of expenditure under the reserved provincial heads in which the limits prescribed in the accepted scheme of normal delegation are exceeded to be referred to the Government of India before the scheme is included in the Provincial Budget. The latter would then proceed as follows:—

(*a*) If the Government of India approved the scheme but the Viceroy and the Finance Member concurred in thinking the orders of the Secretary of State to be necessary on any point of principle or with reference to any general canons which he had laid down in this regard, his previous sanction would be obtained.

(*b*) If the Government of India disapproved the scheme, whether on financial or on other grounds, it would refer the proposals to the Secretary of State for orders.

(*c*) In other cases the Government of India would authorise the Local Governments to proceed with the scheme, and would itself submit a mere report (*ex post facto*) for the Secretary of State's information, in greater or less fullness as the subject-matter might require, and not necessarily (nor indeed usually) by separate despatch on each occasion.

If the Finance Member dissented after failing to secure the Viceroy's concurrence in a prior reference to the Secretary of State, his minute of dissent would go home with the report as in the case of a dissent from any other despatch.

This would obviate many references to the Secretary of State which any reasonably close scheme of delegation would otherwise necessitate, while it would not place the Government of India in the position of vetoing the proposals of a quasi-popular Government. For the sake of convenience and expedition the Government of India would exercise a power of allowance; only the Secretary of State would finally disallow.

It does not seem correct in principle to give a section of the Government of India this special delegated authority to act for the Secretary of State in respect of proposals in which they are themselves participants, and I do not, therefore, suggest the extension of this procedure to Government of India schemes.

Convention and "Conditional Devolution."

13. If the Secretary of State considers at any time, in regard to any reserved head of provincial administration, that the necessity for the transfer of power to subordinate authority has gone beyond the possibilities of delegation, in the sense above defined, he will be able, as I understand, under the Bill as at present drawn, to lay before Parliament a rule declaring the head a transferred head, *i.e.*, he can proceed direct from delegation to devolution. I am not clear that in the provincial field anything further is required, *i.e.*, in reserved subjects where complete popular control is not yet possible, Local Governments will still, I take it, be amenable, subject to an adequate scheme of delegation, to an acknowledged higher control. The exercise of this higher control will, however, be conditioned by proper recognition of a new factor, *i.e.*, the fact of the Local Governments' closer association (even as regards reserved heads) with the local legislature.

14. But in the case of the Government of India devolution and delegation will not suffice. The former implies dyarchy which is barred; and the latter will not carry us far enough: in fact, as I have said, it is a principle quite unconnected with reform. We are bound to allow some scope for political experiment and probation even in the case of the central subjects, and the only escape I can find from this difficulty is by giving deliberate admittance to convention.

The position is this. The Government of India, unless it is to stand wholly aloof from reform, must consult and to an increasing extent defer to the wishes of the legislature. In particular directions where the public interests involved are less vital, this tendency will be more rapidly and completely operative than in others, and a special field for the operation of popular influence must sooner or later be demarcated by current practice. It is probable that in matters of this type the Secretary of State already interferes comparatively rarely, even under present conditions, and when his interference has also come to mean the stifling of political growth and collision with the popular will, he will interfere still less. A time will come when the convention of non-interference will be established and can be formally affirmed by rule (*see* clause 23 of the Bill).

15. This is what we must get at if reform is to mean anything in the central heads. But we shall get at it very slowly and doubtfully, and time is of high importance. My essential proposal as regards the central heads is to anticipate the formation of convention by giving statutory effect at once, in a limited field, to the principle, or fact of political expediency, on which the process is ultimately based, namely, that when the Indian legislature and the Indian executive are in agreement, the Secretary of State cannot freely disregard their joint opinion. Side by side with that there must be the complementary acknowledgment that, when the local legislature and executive are in disagreement, the latter authority, having failed to secure a mandate from its own legislature, must either yield the point or seek the support of a higher one, *i.e.*, it must approach the Secretary of State, as representing Parliament, before it can take action which its own legislature has disallowed.

I describe this as "conditional devolution" because, when the Secretary of State thus defers, as a systematic practice authorised by rules under the Government of India Act, to the joint opinion of the Indian legislature and executive, he is, in effect, allowing a devolution of authority analogous to that which occurs in the case of the transferred provincial heads. When he exerts authority in cases of disagreement, whichever of the opposing views he favours, he is no longer divested of his responsibility to Parliament, but very definitely and personally discharging it.

16. I have said that the experiment can at first be tried only in a limited field. This is only to assert for the all-India field of administration what has already been recognised in the case of the provinces by the moderate range of subjects which are to be "transferred" at the outset. In all else, at the outset, the Secretary of State's control and the Government of India's control must be as unqualified as they are to-day. We are dealing essentially with an experimental and probationary period. But we must equally recognise that the extent of the continuance of control of the present type must be open to reconsideration before the probation has been unduly prolonged, I would say at the time of the next statutory inquest. We shall then have experience to guide us.

17. I return now to the point I took at the outset, that, in the case of the Government of India, still constituted on an official basis, we can only proceed by analogy

and not by any direct imitation of the provincial scheme. The group of all-India heads where popular opinion is to be specially operative will not be "transferred heads" in any full sense. The initiative, for example, will rest with an official Government, not with Ministers responsible to the Assembly. The Secretary of State may have to play an important part in relation to the quasi-popular central heads, whether to reject unaccepted proposals which the Government of India still press, or it may be to approve them in spite of the Assembly's adverse pronouncement; in the corresponding provincial case it may be assumed that he will not normally intervene at all. And clearly the other group of Government of India heads to which present procedure will still apply have no real parallelism with the "reserved heads" of the provinces. But we shall have secured some real association with popular opinion in a stated area, and some opportunity for expansion later; and shall also have done something towards reconciling the anomalous status proposed for the Government of India in the Joint Report with the constitutionalism of other parts of the general Reform Scheme.

Grouping of All-India Subjects.

18. The grouping of the All-India subjects into the categories of "Controlled" and "Popular," or whatever more suitable descriptions can be devised, is really a matter for a Functions Committee working in close association with the Government of India. Some suggestions must be offered now in order to show in a more concrete way what the scheme is likely to imply in actual practice, but I should like these suggestions to be taken without prejudice to the final decision of a more competent authority.

Group B, or the popular group, might *primâ facie*, as it seems to me, include some or all of the following (*see* the Functions Report, pp. 19–22):—

(i) Administration, so far as it is not provincialised, of central sources of revenue (*e.g.*, income tax, salt, customs, &c.).
(ii) Civil law, including laws regarding status, property, civil rights and liabilities and civil procedure.
(iii) Emigration and immigration and interprovincial migration.
(iv) Scientific services (Geological Survey, Survey of India, Meteorology, Central Institutions of Scientific Research, &c.).
(v) Administration of Railways (excluding capital expenditure and also "renewals" expenditure which is very closely connected therewith).
(vi) Commerce, including banking and insurance, and trading companies and other associations.
(vii) Stores, Stationery and Printing.
(viii) Government Buildings.

I have not attempted a complete enumeration and doubtless some minor and miscellaneous items might be added. The whole subject of industries, labour conditions, and the like, so far as it is not provincialised, seems clearly one which ought to be brought under quasi-popular control as soon as possible, but in the present state of the question of industries it will perhaps be better for the time being to leave the Government of India and the Secretary of State the more free hand in working out immediately intended developments which they will have if it is retained for some years in Group A. The subject is, in any case, not one in which any clear expression of popular wishes is likely to be set aside without the most careful consideration.

I have included emigration, notwithstanding the important and delicate questions which it sometimes raises, because it is a subject in which the growth of convention described above has already proceeded a long way towards completion.

19. *Group A*, or the controlled group, would comprise all the heads not allocated to Group B: for example, such basic heads as defence; foreign relations and Native States; taxation; public debt and capital expenditure; and currency and exchange. Or again, the heads (*e.g.*, Posts, Telegraphs and Shipping and Navigation) under which international questions are likely to arise. It is not impossible, moreover, that the activities of the League of Nations or the progress of scientific developments may add to the international subjects in unexpected ways. Criminal law, central police, control of possession and use of arms, and the like, would naturally remain at this stage under direct control. This I think must also be the case with the All-India Services, in respect to which the period of transition will present some special difficulties. Finally, the department of Audit is a head which

obviously cannot be popularised at present; indeed, it is a question how far it can be regarded as on the same plane, *vis-à-vis* the Government of India, as the other subjects in Group A. If the independence of audit is to be further secured it must stand in some special relation to the Secretary of State, and the matter is one which probably requires separate consideration altogether.

20. The foregoing list of *Group A* subjects is, of course, by no means exhaustive, but the mere recital shows, I think, how impracticable it would be at the present stage to attempt to introduce, in such matters, any statutory element of popular control, however qualified. The whole group must stand, in effect, outside the Reform Scheme for the present so far as concerns procedure and machinery. But the Reform atmosphere will be present here as elsewhere and no one could wish to exclude it; and in various directions—taxation is an important instance—the new atmosphere will certainly produce effect.

Group B, it may perhaps be claimed, if constituted on such lines as those suggested, will from the outset cover a fairly wide field and comprise subject matter not only of importance and interest, but also generally *in pari materiâ* with heads which are to be brought within popular control or influence in the provinces.

Control over Legislation.

21. In the case of proposed legislation relating to a Group A head, the previous sanction of the Secretary of State must obviously be taken as at present before a Bill is introduced. The Government of India cannot in these vital matters claim a free hand in employing the certificate procedure to pass legislation which the Secretary of State has not approved, or the right to force his hands, in cases where the Government of India and its legislature are in agreement, by denying him the opportunity of intervention until a point has been reached when effective action on his part must result in open collision with the popular view.

It will be proper, however, that having once obtained the Secretary of State's concurrence in the policy of the measure, the Governor-General in Council should take the responsibility of deciding whether to adopt the certificate procedure or not, as the Bill, as already drawn, appears to contemplate.

Conversely, in the case of legislation affecting the Group B heads, the Government of India will introduce its Bills without obtaining the Secretary of State's previous sanction. The principle here (as in finance) will be that where a popular mandate is to be sought in India no such mandate need be secured from Parliament. It will follow similarly that, if it proves impossible to pass a Bill without resort to certification, the Secretary of State's approval of that course must be obtained.

22. The case of provincial legislation is peculiar. A provincial Bill (*a*) may relate wholly to provincial matters, or (*b*) may touch also on central subjects and interests. I understand it to be settled on the Functions Report (*cf.* also clause 8 of the Government of India Bill) that Bills of the first class are not in any case to come to the Government of India for sanction to introduction. They fall therefore outside the scope of this scheme (*see* para. 31 below).

Under clause 8 of the Government of India Bill, Bills of the second class will require the Government of India's previous sanction, and since the essential point on which the reference is made is the connection of the Bill with a central subject, the procedure under which the Government of India will deal with the application for sanction will presumably be the same whether the Bill relates primarily to a reserved or a transferred head. I suggest, therefore, that we follow the principle already proposed for provincial schemes of expenditure, *i.e.*, that the Government of India should exercise a right of allowance but not of disallowance. If it approves a measure and no point of principle emerges on which it considers a prior reference to the Secretary of State to be necessary, it should authorise the Local Government to proceed. In other cases it should take the orders of the Secretary of State.

23. Nothing, in my view, should be laid down purporting to limit the exercise of the Secretary of State's final right of veto. It is obvious that it can never be lightly employed.

Control over Expenditure.

24. The question of financial control has already been touched[1] upon in several of its aspects. Schemes of expenditure on Group A subjects should be submitted for

[1] The various suggestions scattered through this statement are tabulated in para. 27 below.

the Secretary of State's sanction or sanctioned by the Government of India themselves according as the delegation limits are or are not exceeded. I do not contemplate that the appropriations proposed under these heads should be voted by the Assembly in either case, but there would be, as at present, full right of criticism.

For Group B subjects the previous sanction of the Secretary of State would not be required to any measure which is (*a*) within the delegation limits, or (*b*) beyond those limits, but approved by the Assembly. But in the latter case a report should be made to him. If Legislative approval was withheld the Government of India could still undertake the scheme with the Secretary of State's express sanction, but the adverse popular view must obviously be a material factor in his decision.

It will be noted that the Government of India will not be required to obtain the Assembly's approval of proposals under Group B heads which are within the delegation limits. The purpose of the scheme is not to deprive the Government of India of existing powers but to secure that any powers which the Secretary of State surrenders shall go, not to the Government, but to the Legislature. The fact, however, that the Government of India will be able to sanction Group B schemes within the delegation limits without reference to the Legislature points to the desirability of keeping delegation within its proper scope.

The larger schemes of the Group B heads in the Budget must be expressly voted by the Assembly.

25. As regards the provinces, I have already indicated in para. 12 a procedure for schemes under the reserved heads. As regards transferred heads, I suggest that schemes of expenditure exceeding the delegation limits should be reported to the Secretary of State for information, through the Government of India, but should not require the previous sanction of either authority. It must be open to the Government of India and to the Secretary of State to make such comments and suggestions as they think fit for the future guidance of the Local Government. But anything like a systematic practice of reviewing decisions already taken by the Governors with their Ministers in the provinces, and by the Government of India and the Indian Legislature in the case of the Group B heads, would obviously be cramping and inexpedient.

Control over purely Administrative Schemes.

26. As regards matters of administration arising in connection with either group of the Government of India heads it seems better, when these have no financial or legislative aspect, to continue the present practice and treat them as falling primarily within the competence and responsibility of the local executive, *i.e.*, the Government India. The Indian Legislature could at any time discuss such questions, and in matters relating to group B their expressed opinion would naturally carry special weight, notwithstanding that Resolutions on administrative matters have advisory effect only. Similarly the Secretary of State could, as at present, comment on or even reverse any administrative action which the Government of India had taken, and his previous approval would continue to be taken when an administrative departure of special novelty or importance was in contemplation. But to go further in the way of control, whether by the Secretary of State in the interests of the Legislature or by the Legislature directly, would impair the confidence and vigour of the executive and impose on the Secretary of State direct responsibilities which he could not properly discharge from London.

Equally in the case of the Local Governments it would be impracticable to go beyond the practice of requiring a reference to the Secretary of State only when administrative action of special importance was in contemplation.

But while it appears that existing practice in this matter may be continued, as regards its method or want of systematised method, it must be understood that in the prescription that important administrative departures shall still be referred to the Secretary of State the word "important" will have acquired a wider, though still undefinable, connotation. As stated in para. 17 of the Majority Report, "the "degree of discretion allowed in matters of pure administration should be enhanced "in general correspondence with the wider authority to be allowed in future in "matters of legislation and finance." With this development and with the removal by legislation or the enlargement by delegation (*see* paras. 9 and 10 above) of many restrictions which now inhibit administrative action very favourable conditions will be created for a closer co-operation between the Governments and Legislatures in India.

Summary of Proposed Relations between the Secretary of State, the Government of India, and the Indian Legislative Assembly.

27. It is now possible to collect and summarise the proposals regarding the future relations between the Secretary of State and the Government of India, and, where central subjects are concerned, between the Government of India and the Legislative Assembly:—

Delegation.

(A) The existing scheme for the delegation of financial powers to the Government of India and the Local Governments to be substantially enlarged. [The new limits and criteria to be laid down in the revised scheme and simplified codes are referred to below as the "delegation limits."]

All-India Subjects.

(B) The All-India heads of administration to be distributed in two groups, namely, *Group A*, including heads in respect of which the Secretary of State will maintain the existing methods of control, and *Group B*, including heads in respect of which the Secretary of State will normally only intervene to decide matters on which the Government of India and the Legislative Assembly are in disagreement.

(C) The allocation of heads between the two groups to be generally on the lines suggested in paras. 18 to 20, and the procedure for dealing with Group B heads to be given statutory authority by rules made under clause 23 of the Bill.

(D) *Procedure in respect of Group A subjects.*

(i) *Legislation.*—Secretary of State's previous sanction to be obtained before legislation is introduced. Governor-General in Council to decide at his discretion whether to employ the certificate procedure or not.

(ii) *Finance.*—Secretary of State's previous sanction to be obtained to schemes exceeding the delegation limits. Budget to be submitted to the Assembly for criticism but not to be voted.

(E) *Procedure in respect of Group B subjects.*

(i) *Legislation.*—Secretary of State's previous sanction to introduction of legislation not required. Certificate procedure not to be applied without his sanction.

(ii) *Finance.*—Government of India to be free to incur expenditure within the delegation limits without reference to the Secretary of State or the Legislative Assembly. Schemes of expenditure in excess of those limits to be submitted through the Budget to the Assembly whose vote thereon will be final, unless the Secretary of State, on subsequent reference to him in respect of a scheme disallowed by the Assembly, authorises the expenditure to be incurred. All schemes of expenditure in excess of the delegation limits, if approved by the Assembly, to be reported to the Secretary of State.

Provincial Subjects.

(F) *Procedure in respect of Reserved heads.*

(i) *Legislation.*—Government of India, in those cases which are not wholly within the Local Government's discretion, to be empowered to authorise introduction of legislation unless (*a*) it disapproves the measure, or (*b*) while approving the measure, it considers that it should first be referred to the Secretary of State on a point of principle. In cases (*a*) and (*b*) it will refer the Bill for the orders of the Secretary of State.

(ii) *Finance.*—Government of India to be empowered to authorise Local Governments to proceed with schemes of expenditure in excess of the delegation limits unless (*a*) it disapproves the scheme, or (*b*) while approving the scheme, the Viceroy and the Finance Member consider that it should first be referred to the Secretary of State on a point of principle, or with reference to canons laid down by the Secretary of State in this regard. In cases (*a*) and (*b*) the Government of India will take the orders of the Secretary of State. In other cases it will merely report to the Secretary of State *ex post facto*.

(G) *Procedure in respect of Transferred heads.*

(i) *Legislation.*—As for reserved heads (*see* para. 22).

(ii) *Finance.*—Previous sanction of Government of India or Secretary of State to schemes of expenditure in excess of the delegation limits not required. But report will be made by the Local Governments to the Government of India and by the latter to the Secretary of State.

All Subjects. All-India and Provincial.

(H) *Legislation.*—Nothing in the above to imply any limitation on the exercise by the Secretary of State of the ultimate power of legislative veto.

(I) *Administration.*

(i) Previous orders of the Secretary of State on administrative proposals which have no legislative or financial aspect only to be taken where these proposals, in the view of the initiating Government, raise administrative questions of special importance.

(ii) Resolutions of Legislative Assembly on purely administrative proposals to be treated as advisory only.

(J) *General.*—These arrangements generally to be subject to reconsideration by the first statutory Commission.

THE COUNCIL OF INDIA.

28. The foregoing scheme would not diminish the necessity for a Council of India in that portion of the administrative field (Group A of the all-India subjects) in which for the time being existing methods of control are to be maintained, while the new rule-making function which the Bill imposes on the Secretary of State seems definitely to emphasise the desirability of leaving the advisory body in the same sort of constitutional relationship to the Secretary of State as at present. The same is true, with some qualification, in the case of the work of the reserved heads; this will still be appropriate work for the Secretary of State in Council though there will be less of it, and the Council, like everybody else, will have to reconcile itself to some modification of attitude. But in four respects the new conditions entail definite change or prospect of change:—

(1) On the whole it does not seem correct and expedient to maintain any longer the Council's right of financial veto. My colleagues on this Committee are opposed to it, as they are to the whole statutory conception of the Secretary of State in Council, from the point of view of Parliament as confusing and obscuring the Secretary of State's responsibility to that body. It may also be argued, I think, that it is open to objection from the standpoint of popular or quasi-popular government in the Indian provinces. These objections may be mainly theoretical, but are strongly felt in India and in some quarters at home. I think it would be wise to defer to them.

From the special standpoint of the Council itself the question, though important, is not, I think, fundamental. The thing which is material to their usefulness and legitimate influence is not some anomalous right of holding up a Secretary of State or blocking a Cabinet decision, which in fact has never been attempted, but the continued recognition of their responsible though subordinate association with the Secretary of State in the higher control over the authorities in India. The veto is also potentially useful as a weapon (though too heavy a weapon) which might be employed to ensure that important and controversial questions of apportionment of charge are brought to a head and pressed, it may be hoped, to impartial decision. This however can be arranged, I think, in other ways.

(2) It will not be appropiate, I think, that Council should continue to be formally associated with the Secretary of State in such questions connected with the transferred provincial heads and the Group B All-India heads as may in future come to this country for decision. These should be decided by the Secretary of State alone, acting, not as an administrative authority equipped with expert advice on Indian conditions, but as Minister of the Crown, dealing on behalf of His Majesty's Government with important questions of Indian and Imperial policy. The advice of members of the Council will be available if he wants it, but his action will be his own.

We thus arrive at the principle of the progressive exclusion of Council *pari passu* with the progressive exclusion, so far as the business of day to day control is concerned, of the Secretary of State himself.

(3) I have already emphasised that the complete retention of the Secretary of State's powers of control in respect of certain branches of administration is a matter which must be periodically reconsidered. This is equally true of the Council itself: its retention as a matter of course from decade to decade would not be defensible. I would suggest that the present Bill should re-establish the Council of India for a named period only, say 12 years, so as to enable the whole matter to be re-examined at the next decennial inquest. Then, if the Council be still required its life can be extended, but the onus of proof will lie on its defenders. If it is found not to be wanted its term of life will run out automatically.

(4) As the area in which the Council operates becomes more strictly circumscribed not only can its numbers be diminished, but its work, and the qualifications required, will tend to become more purely specialist. This indicates the desirability of leaving the Secretary of State a specially free hand in the choice of personnel and, particularly at a later stage, in deciding the strength and methods of work of the Council from time to time. It also points to the possibility, if the process of natural change is not interrupted by drastic alterations at one of the decennial reviews, of a time coming when it would be proper to retain an advisory personnel but no longer appropriate to retain a Council of India.

29. I wish to add that, while I wish to retain the Council for the present, I do not think it expedient to maintain the jealous statutory safeguards which restrict the Secretary of State in regulating its procedure and its relations, in the disposal of public business, with the India Office staff. I would give the Secretary of State, or on particular points, perhaps, the Secretary of State in Council, full power to determine procedure generally, and in particular to define the conditions in which a decision of a Committee of the Council may have the authority of a decision of the full Council, and to secure that the full machinery of the Council procedure shall not be turned on to matters of minor importance.

The India Office.

30. As my purpose in preparing this note is rather to set out the general scheme and indicate the special consequences arising from it than to offer independent suggestions on every part of our terms of reference, I will only deal with two points connected with the India Office as distinguished from the Council of India.

(1) An Indian witness submitted to us the interesting suggestion that the transferred heads should be dealt with in a special department of the India Office. This would hardly be a satisfactory permanent basis for the organisation of the Office, since the intention is that the transferred group should expand by successive accretions at the expense of the reserved group. But there is much to be said for it as an initial arrangement, especially if it were decided that the Council, as such, should not be concerned in the handling of these questions. Some points arising under these heads will still be referred home for decision; others (*e.g.*, in connection with public health, education, &c.) for scientific and other specialist advice; and very many for information; it is important to secure by some decisive change of organisation or procedure that they shall be handled throughout from a distinctive standpoint.

In theory, too, this idea would be equally applicable to the All-India heads in Group B, and might, I think, be applied to some extent actually. But the transferred heads and the Group B heads together would be too heterogeneous for collective treatment in their entirety. Railway administration, for example, could certainly not be placed in the same hands as education.

(2) The possible reduction of the maximum strength of Council and the probable inclusion of a larger Indian element based on political qualifications may weaken the Council on its financial and business side, and will, at any rate, prevent its being strengthened on that side, though such questions are of rapidly growing importance to India at this particular time. In view of this, and of the possible exclusion of Council from such business matters as may be brought under Group B of the All-India heads, I attach particular importance to a recommendation made to us by a witness of high authority, namely, that one of the Under and Assistant Secretaries should always be an official possessed of special knowledge of finance and business matters. This happens to be the case at present, though rather by a personal accident than in pursuance of an established convention, and I can thus confirm from my own

experience the immense value of such an arrangement. The necessity may disappear ultimately, but I cannot foresee that it will be appreciably reduced for some years to come.

Relations between the Local Governments and the Government of India.

31. A few words of explanation or suggestion remain to be added about some special points, the first of which relates to the assumptions made in this memorandum as to the future relations between the Local Governments and the Government of India. The question cannot be wholly excluded from any systematic enquiry into the control to be exercised in future by the Secretary of State, including his control in respect of purely provincial matters, as the two subjects are evidently closely inter-related (*cf.* para. 22 above), but it is not directly within our Committee's scope, and when dealing with it I have been guided by what I take to be the policy of the Montagu-Chelmsford Report (*see also* the preamble to the Bill, lines 5–10) rather than by any personal views of my own. My suggestions on this subject are therefore tentative, more especially as the whole question of the Secretary of State's control in provincial matters is one which our Committee found itself unable to explore (*see* para. 18 of the Majority Report).

It will be noticed that in para. 12 and elsewhere I have suggested that the Government of India should have a recognised right of allowing proposals submitted by the Local Governments, but should not exercise a corresponding right of disallowance. I am referring here to normal practice in everyday procedure, and do not wish thereby to seem to limit the ultimate authority which the Governor-General must possess and on occasion exercise under section 33 of the Government of India Act. As a matter of ordinary practice it is probably better, especially in the new conditions, for the Government of India to let the proposals of the Local Governments reach the Secretary of State and be decided by him than to reject them summarily at Delhi.

Question of an "Advisory Committee."

32. While I am strongly of opinion that the Council of India, that is an advisory body participating in some statutory sense in the action of the Secretary of State, should be retained for some time longer, I may point out that the general scheme which I have suggested does not stand or fall by the decision on this point. If the view of my colleagues prevails, and an Advisory Committee is created which does not stand in this special statutory relationship to the Secretary of State, I should still prefer the scheme which I have sketched to that of the Majority Report.

Fiscal Autonomy.

33. I have not thought it expedient to shape the arrangements proposed under this scheme with the definite purpose of facilitating the disposal of the difficult question of tariff autonomy. By (*a*) dispensing in matters of legislation with previous reference to the Secretary of State, and (*b*) limiting the Secretary of State's freedom of action on questions on which the Government of India and the Legislative Assembly are in agreement, the way would be prepared for forcing the hands of the Secretary of State and Parliament, and so expediting a solution of the Indian fiscal question. But this would be a reckless expedient, entailing the surrender of essential powers of control in many directions.

The correct view, I think, is that, if the Secretary of State is to be responsible for "superintendence, direction and control" at all, taxation of all kinds must be one of the last subjects which he should surrender. At the same time, if it is not going beyond our province, I would like to say two things:—

(i) So long as the demand for a settlement of the tariff question in substantial accordance with Indian wishes remains unsatisfied, there will be insistent pressure that the general and permanent system of control shall be shaped with special reference to this particular problem.

(ii) The Reform scheme will, to a large extent, be offered to India in vain if that question is not disposed of as nearly simultaneously as may be practicable.

In my view a promise should be given, concurrently with the introduction of Reform, that His Majesty's Government will take up the Indian fiscal question as soon as may be, and pursue it to a definite decision, after such preliminary investigation as may be necessary.

21st June 1919.

(Signed) J. B. Brunyate.

Note by Mr. B. N. Basu on the Report of the Committee on the Home Administration of Indian Affairs.

I agree with the principle laid down in the Majority Report, para. 13, that when the Government of India is in agreement with the Legislative Assembly, their joint decision should ordinarily prevail, and with the recommendations contained in paras. 14, 15, and 16 of the Report to give effect to that principle.

2. As regards the basis adopted in para. 17 of the Report on the subject of delegation, namely, that the principle of previous consultation should be substituted in all cases where previous sanction is required, I do not think it will carry us far. I think it would have been preferable if the Report had gone further and specified the directions in which this principle could be put into operation at the outset. My own view is that in all important matters the Government of India will, before deciding to act in agreement with the Legislative Assembly, take the sanction of the Secretary of State and previous consultation will in practice come to mean previous sanction.

3. The situation, however, has its possibilities. A convention would soon grow up as to which class of subjects should be sent to the Secretary of State for previous advice or sanction, and which for information only. Sir James Brunyate, in the valuable and thoughtful statement appended to the Report, has propounded a scheme, which, if I understand him rightly, anticipates the growth of this convention by attempting to indicate this class of cases. The two methods are to my mind, having regard to the relations between the Secretary of State and the Government of India, the same in essence. If, therefore, the scheme of Sir James Brunyate for regulating the future relations between the Secretary of State and the Government of India is acceptable as being more definite and a more cautious method of progress, I should be prepared to accept it, as, in my view, the checks it suggests in Group A would soon establish themselves in practice. It has the great merit of suggesting a basis on which future action may be taken in the Government of India itself. Sir James Brunyate rightly says that his enumeration of the subjects under Group B is not exhaustive. I therefore do not offer any criticism on it, except to point out that presumably it is his intention to include education and sanitation in Group B so far as they are not finally provincialised.

4. Special difficulties prevented us from going into the question of the relationship between the Secretary of State and the various local governments, particularly as to whether and how far this relationship should be direct or through the Government of India. I am aware that there is a considerable body of opinion in the provinces in India that this relationship should be direct. I am not inclined to go beyond the limited area of such direct relationship that now exists in regard to the Presidency Governments. I am of opinion that the intervention of the Secretary of State whenever it may still be required in provincial matters, should be through the Government of India; this method of procedure will ensure co-ordination and uniformity of treatment, and will facilitate a quicker adjustment of disputed matters, as a settlement may be arrived at on the spot more speedily. I am aware that provincial autonomy in certain spheres of government is not only desirable but necessary, and at one time, owing to provincial finances being left entirely at the mercy of the Central Government, this cry became insistent in India. The position, however, will now greatly change and provinces will henceforth be able to develop their resources without the fear of these resources being commandeered by the Central Government. In this connection I may be permitted to raise a note of warning to my own countrymen. We have to bear in mind that some of the most important matters of administration, such as the Army, foreign relations, &c., which bring together governments of a federal type, will, for a considerable time yet, remain in the hands exclusively of the official Government, and will not be available as a cement to bind the different provinces of India into one organic whole. In the meantime, if we give up the present constant association of the provinces with the Central Government, the growing common life of India may again break into pieces and we

may lapse back into an India of diverse and mutually hostile states, unable when the time comes, owing to lack of experience in associated work, to take charge of our corporate responsibilities.

5. Apart, however, from the question of co-ordination and association, to which I attach great importance, the creation of a dualised form of government in the provinces, partly official and partly popular, will to a great extent reduce the area of interference of the Secretary of State in the provinces. I should like briefly to indicate the formula that I should propose :—

(*a*) In central subjects, the provincial government must take the previous sanction of the Government of India.

(*b*) In reserved subjects, in matters where it desires to adopt the certificate procedure, it must also do the same.

(*c*) In reserved subjects, where it is willing to abide by the decision of the Legislative Council, it need only *ex post facto* inform the Government of India.

(*d*) In transferred subjects its duties will be as in (*c*).

(*e*) In all subjects where the Local Government desires to overrule the Ministers or the Legislative Council, it should take the previous sanction of the Secretary of State.

Consequently it is only in regard to (*b*) and (*e*) that the intervention of the Secretary of State will be required.

I am in general agreement with Sir James Brunyate's proposals so far as they apply to reserved subjects, subject to the qualification that the Government should not be empowered to adopt the certificate procedure save with the express authorisation of the Secretary of State; and in regard to transferred subjects, I am of opinion that while information as to important action taken therein will naturally be regularly supplied to the Government of India and the Secretary of State from time to time (*see* paras. 25 and 26 of the statement) it should be distinctly laid down that this should be essentially for information only and that the Government of India and the Secretary of State should refrain from using such information as the basis for anything which could be interpreted as interference with the decisions taken.

6. Moreover, as regards expenditure, whether in the Government of India or in reserved subjects in the provincial governments, I should not recommend any considerable relaxation of delegation except on one condition, that details of all enhancement over the previous year's Budget are shown in the annual statements to be presented to the Legislative Assembly or the Legislative Council. In regard to transferred subjects in the provinces, it will be a matter of devolution and there should be no reference to the Secretary of State, except when the Local Government seeks to interfere.

7. If the question of provincial governments was a matter into which we could go, apart from their relations with the Secretary of State, I should wholly support the recommendations contained in paras. 24 and 26 of the very elaborate and instructive note of Professor Keith, except that in clause 4 of para. 26 I should state the formula as regards the withholding of assent to Bills of Local Governments in the terms set out in para. 15 of the Report, namely, that such assent should be withheld " only in cases in which the Secretary of State feels that his responsibility to " Parliament for the peace, order and good government (of the provinces or of any " other part) of India or paramount considerations of Imperial policy require him to " secure reconsideration of the matter at issue by the Legislative Council." The form suggested by Professor Keith may expose a province in India to influences of special vested interests in any part of the Empire, which is not desirable.

8. As regards the abolition of the Council of the Secretary of State, I agree with the Majority Report though not quite for the same reasons. My reasons are, firstly, that the abolition of the Council will naturally result in the Secretary of State leaving things more and more to the Government of India, and interfering only in matters of Imperial concern, and, secondly, it will thus throw a much greater responsibility on the Government of India, which in its own interests will have to share it with the representatives of the people, apart from any question of statutory obligation. We shall thus bring about greater co-operation and responsible association between the Government and the people, and greater reliance upon their conjoint action, and pave the way to the attainment of self-government in India without much dislocation of machinery.

Advisory Committee.

9. But the creation of a statutory Advisory Committee may deflect the course of events. It will retain the demerits of the present system, and will lose some, if not most, of its merits. Having expert Indian advice at his elbow, the Secretary of State will be inclined to take a much larger share than he would otherwise have done in the financial, administrative and legislative functions of the Government of India, much to the same extent as he does now, except in regard to matters to be excluded by delegation, convention or Statute; therefore the freedom of the Government of India will not be secured; its official or bureaucratic character, that is to say, its final reliance upon official authority at Whitehall, will still continue unimpaired; and the process of evolution which the Montagu-Chelmsford scheme so greatly lays stress on, namely, its increasing association with and reliance on the representatives of the people, will be seriously checked.

10. Moreover it will not establish "the undivided responsibility to Parliament of the Secretary of State" on which the Majority Report to a great extent relies for its recommendation on this head. For, if the Secretary of State was at all protected from Parliament by reason of his having an expert Council, whose authority he could under the Statute in some cases ignore and in most cases over-rule, he may as easily seek protection behind his Advisory Committee, which, if constituted on the lines recommended in the Report, will be composed mainly of expert officers, whose opinions, for purposes of protection from outside, would have much the same weight as of the existing Council.

11. Then again the Advisory Committee, not being associated with the Secretary of State in the orders he will issue, is bound to lose its sense of collective responsibility; the spirit of co-operation and mutual accommodation which this sense of collective responsibility induces will be weakened, and may disappear, and the Secretary of State may be thus forced to rely more on the advice of individual members than on the joint advice of the Committee.

12. The position of the Indian members who will be taken on a modified system of election will also be difficult. There being no corporate responsibility, their opportunities of influencing the opinion of their official colleagues will be less than at present. The Secretary of State will be under no obligation to seek the advice of his Advisory Committee, and, naturally, it cannot be expected that he will seek the advice of his non-official—and, in the official view—inexpert, Indian members to the same extent as that of his official expert advisers. This may create a very undesirable situation. I have no doubt that a Secretary of State will always try to avoid any appearance of indifference or slight, but the situation is not without its possibilities of misunderstanding and friction.

13. I am therefore opposed to an Advisory Committee with no responsibility and no statutory functions. If it should be decided that for some time at least a Council or an Advisory Committee is necessary, I should prefer a Secretary of State in Council, and to make it easy for the Council to disappear when the time comes, without having to wait for a Parliamentary Statute, I should accept the recommendation of Professor Keith, that the King in Council, whenever he is so advised, may make an order transferring the functions of the Secretary of State in Council to the Secretary of State and abolishing the Council. Nor do I see much objection to accept as an alternative the suggestion of Sir James Brunyate, that the Council should at the end of the first period of 10 years cease to exist unless the Parliamentary Commission reports in favour of its continuance.

Functions of the Advisory Committee.

14. If the final Parliamentary decision now be in favour of an Advisory Committee distinct from the Secretary of State, the Committee should have statutory powers, so that the difficulties I have suggested as likely to arise may be avoided; and so long as the revenues of India are by Statute vested in the Secretary of State and can be dealt with by him irrespective either of the Government of India or of any popular control in India, I would not abolish the veto of the Council; the veto has, it is true, never been exercised, but its existence must have a restraining influence and must strengthen the position of the Secretary of State as against the Cabinet. The abolition of the veto may create unnecessary suspicion in

India, as an attempt to remove the last obstacle to the inroad of the British Treasury on Indian revenues, especially in view of the fact that the non-official Indian element in the body which would advise the Secretary of State is about to be strengthened.

Composition of the Council or Advisory Committee.

15. The Report recommends that not less than one-third of the body should be Indian public men selected from a panel, and leaves it open to the Secretary of State to appoint other Indians representing special interests or possessing administrative experience. In my opinion, having regard to the altered circumstances, the necessity of restraining the officials when they may be tempted to overstep the limits of their spheres, of stimulating, advising, and guiding the popular governments, of harmonising the relationship between the official and non-official Provincial Governments and between the Government of India and its Legislative Assembly, the authority which will have the final decision cannot be safely constituted with less than half its members as Indians. I would, therefore, recommend that half of the number should be Indians, and I am prepared to concede, though this is neither desirable nor essential, for I am sure Indian electorates will elect men possessed of the requisite qualifications, that not less than two-thirds of this number should be selected as recommended in the Majority Report, the rest being nominated by the Secretary of State. As regards the other half, it must be evident from the nature of the duties that the Council or Advisory Committee will have to discharge, that it should not consist wholly of officials. The official experience will be primarily and efficiently represented in the despatches that will come from the Government of India, and also in the permanent departments of the India Office; this experience, while essential in matters of ordinary administration in which the Secretary of State will interfere less and less, is not of the same value when he has got to deal with important matters of policy or constitutional usage involving decisions of critical questions between the official governments and the popular elements. Under these conditions it is not only not desirable, but may even be embarrassing to have a preponderatingly official element in the Council of the Secretary of State. What is wanted is not a reduplication of the Indian official point of view, but a broadened outlook from the Indian and British points of view. The Indian point will be secured by the increased representation of the non-official Indian element. The British point of view can only be secured by the introduction into the Council of a new element, namely, Englishmen taken from the public life of England. I would therefore recommend that room should be provided for such association by laying down that not more than one-third of the members should be officials who had held office in India, the rest being men of British experience nominated by the Secretary of State. To my mind a Council so constituted will be an ideal flywheel for the new machinery we are setting up. If we revert to the old constitution of an overwhelming official preponderance in the body which will advise the Secretary of State we shall be courting grave risk. I see no sufficient reason why the members of the Council of the Secretary of State should be, as now, excluded from sitting in Parliament. There would be obvious advantages if they were allowed to do so, especially if they become a merely advisory body.

Parliamentary Committee.

16. This is a feature of the Montagu-Chelmsford Report which has met with universal and unqualified approval in India. The Majority Report has raised an objection to it which it considers fundamental, namely, that an increasing interest taken by Parliament in Indian affairs might encourage a tendency to interfere, and might militate against the object of the Reforms, which is gradually to transfer control to the Legislatures in India. We have to bear in mind, however, that this object, specially in the Central Government, is remotely in prospect, and we shall have a long way to travel before reaching it. In the meantime, all the more vital concerns of Government will remain vested in an official executive. This executive will have a very difficult part to play. It is casting no slur upon it to say that it is not properly trained or constituted for its new *rôle*. Hitherto, it has held all the threads of administration in its hands; it has been alike the source of power and the instrument of its effective use in all directions. Henceforth, while it will still exercise the paramount functions of government, and consequently retain its position of unchallenged supremacy in what are justly regarded as the attributes of power, namely, the enforcement of law and order,

it will have in other branches of administration to take a subordinate place as executant of the will of the people whom it is controlling and governing in a different sphere. The Civil Service has shown great adaptability in the past, and I hope its fabric will respond to the new conditions in a spirit of loyal co-operation. But the whole situation requires careful supervision and guidance, not alone by the Secretary of State but by Parliament itself. Parliament is now deliberately transferring some of its powers to the Indian legislatures, and has reserved to itself the determination of the future stages of further transference until India has secured self-government within the Empire. Therefore, until that goal is reached, India would not only not fear any tendency in Parliament towards taking an increasing interest in her affairs, but would urgently want it, and would welcome any means to secure it. We cannot at the present moment give Parliamentary representation to India, though India, which is still governed by Parliament, stands on a different footing in this respect from the Dominions; and therefore the only way to secure in Parliament some knowledge of and interest in Indian affairs is by means of a Parliamentary Committee, which will be annually constituted with importation of fresh blood, and will thus in the course of a few years give the House of Commons a fairly large number of members with some acquaintance with Indian affairs. Even if this Committee, like the Committee of Public Accounts, deals with the preceding year, it will be able by its annual reports to place before Parliament a *résumé* of some of the most important aspects of administration in India, in a form essentially different from the present official reports on the moral and material progress in India. The British public will have the inestimable advantage of having a picture of India in outline, presented by an independent body of men who are dissociated from both the official and non-official elements in India and are the chosen representatives of the British people, and the Indian public will have access to an authority which it will regard more or less as impartial.

The India Office.

17. As regards interchange of the superior staff between England and India, I do not appreciate any very great difficulties. The higher officials in the India Office may and should from time to time be sent out to India to serve or assist in the Secretariat, and their place taken here by Indian officials, who should be of Indian descent, if available. I would not claim any special privilege for the Indian; but it is only fair that when the Indian is equally qualified, he should have preference, not because he is an Indian, but because the British element will, in the very nature of things, be preponderatingly represented in the India Office staff. This will be a matter of arrangement which will grow into a system and so arranged as not to affect the prospects of the home officials. As regards Indians being allowed to take a responsible part in the higher control of the Office, I think it should be definitely laid down that there should always be an additional Indian permanent Under Secretary of State. Ordinarily he should not be an Indian official. With an Indian non-official member in all the Provincial Executive Councils, and probably more than one minister in all the provinces, with also not less than two members in the Executive Council of the Government of India, it will be easy to combine non-official training with administrative knowledge in a non-official Indian selected for the post.

18. I cordially acknowledge the courtesy and consideration shown to me by my colleagues in the course of our discussions.

(Signed) B. N. Basu.

21st June 1919.

Minority Report by Professor Berriedale Keith on the Terms of Reference to the Committee on the Home Administration of Indian Affairs.

I regret that the divergence of opinion between the majority of my colleagues and myself on certain important matters is so great as to render it impossible for me to concur in the Majority Report. This divergence of view rests on our varying conception of the true line of development in the relations between the Secretary of State for India as representing the Government of the United Kingdom, and the Government of India, which should be followed in order to achieve the progressive realisation of responsible government in India, the goal envisaged in the declaration of the policy of His Majesty's Government made by the Secretary of State in the House of Commons on 20th August 1917. From some of my colleagues I differ also in holding that it is no part of the duty of the Committee to take into consideration, in framing their proposals, difficulties which His Majesty's Government might experience in securing their acceptance by either House of Parliament, as I hold that Parliament would derive more real help from conclusions based entirely on the merits of the case. I must also express the opinion that the evidence taken by the Committee was far too predominantly official in character, and that the views of political circles in India were not adequately before the Committee. Had it been possible for my colleagues to realise the force and weight of Indian opinion on the issues before us, I cannot but feel that there must have been a considerable difference in the terms of their Report, which, in my opinion, is in too large measure based on the views which were with equal energy and ability urged upon us by several members of the Council of India and officials of the India Office, who have attained official maturity under the Council system, and who, I consider, hardly realise the true significance of the declaration of 20th August 1917 and of the Montagu-Chelmsford Report.[1] Further, I consider that a fundamental error has been committed by my colleagues in treating as the main subject of our enquiry the position of the Council of India in the scheme of Home administration of Indian affairs. It appeared to me that this question was one essentially of secondary importance, and that it was impossible to treat it with any prospect of a satisfactory conclusion until the problem—appropriately placed as the first of the terms of reference—of the relations of the Secretary of State to the Government of India had been examined with due care and disposed of. The conclusions reached, therefore, by my colleagues seem to me to suffer from the fatal defect that they are not based on any clear or consistent conception of the measure of control which in future is to be exercised by the Secretary of State over government in India.

2. It is a fundamental feature of the Montagu-Chelmsford Report, which formed the basis of our enquiry, that the Government of India shall remain an official Government, and be exempt from the principle of dyarchy adopted for the governments of the provinces. But it is another essential part of the scheme, that, while the official character of the Government shall be rigidly maintained, a new character shall be given to the legislature by the substitution for the present Legislative Council of two chambers, in one of which, the Legislative Assembly, at least two-thirds of the members shall be elective. To prevent the occurrence of the deadlocks, almost inevitable between an official government and an elective chamber, special power is given to the Government of India to secure legislation by the second chamber, the Council of State, in which there is a nominated majority alone, but it is clear that the intention of the framers of the Report is that the Legislative Assembly will normally share in all legislative proposals and will have opportunities of criticising expenditure.

3. The fundamental question before the Committee, therefore, appears to me to be the relation in which the Governor-General in Council under the reform scheme

[1] Cd. 9109.

is to stand to the Secretary of State. The following, among possible answers, may merit notice:—

(*a*) It may be held that the maintenance of the Government of India as an official Government does not necessitate any change in principle in the relations which it occupies to the Secretary of State, and that, while delegation of authority in financial and other matters from the Secretary of State may go on, this should be governed by the principles at present adopted, no essential change being involved in the existence of the Legislative Assembly.

This is an extreme view, and I do not think it necessary to say more than that it seems to me flatly contrary to the whole spirit of the policy of His Majesty's Government.

(*b*) It may be held that, as suggested to us by one witness, the Secretary of State should retain control of the Government of India only in certain defined matters, covering such questions as external affairs and criminal law, but in all other matters he should abandon formally any right to control the Government of India. It is of course possible to hold the view that this might be a suitable method of leading up to responsible government; the Government of India cut off from normal connection with the Secretary of State might become more and more amenable to Indian influence, and the Imperial Government might thus find it easy to consent to a complete change in the official character of that body.

I consider, however, that this scheme must be regarded as inadmissible on the ground that it contravenes an essential constitutional principle by creating a body of officials who are not responsible to an Indian Legislature and yet are not responsible through the Secretary of State to the British Parliament. In practice I cannot conceive that any Secretary of State or House of Commons would tolerate such a state of affairs.

(*c*) It may be held—and I think that those of my colleagues who favour the retention of a permanent advisory body by the Secretary of State must logically hold—that, while the existence of a representative Legislative Assembly must be taken into account in determining the nature of the control to be exercised by the Secretary of State, the time has not yet come when the attitude of the Secretary of State towards the actions of the Government of India can be based substantially on the consideration whether or not the Government in so acting is carrying out the wishes of the elected representatives of the people. From this position it follows that no clear guidance can be given to the Secretary of State as to the principles which should guide his action, and it will rest with him, in consultation with his advisers (whether, as Sir James Brunyate desires, the Council of India or, as the majority prefer, an Advisory Committee) gradually to work out some line of action.

I cannot think that such a solution of the problem promises much help in the development of responsible government in India. It could hardly avoid bringing the Secretary of State into needless controversy with the Legislative Assembly, and it would certainly hamper that process of decentralisation which is admittedly one of the most clamant needs of India.

(*d*) The true solution appears to me to lie in realising that the reform scheme is a reality, and that it demands a definite decision of the Secretary of State to abandon the use of powers which he has long, and doubtless beneficially, wielded, but which cannot, consistently with the development of self-government in India, remain in normal exercise. The principle to be adopted is simple: *when the action of the Government of India is in accordance with the wishes of the majority of the representatives of the Indian people in the Legislature, interference by the Secretary of State is justifiable only when, after careful consideration of all the circumstances, he is satisfied that his intervention is necessary in the interests of the peace, order, and good government of India or of some part of the Empire other than India.*

4. It is clearly impossible to define the classes of cases, in which the Secretary of State may have to intervene, in such a manner as to permit of any restriction by statute or by statutory orders of the supreme right of superintendence, direction

and control vested in him by section 2 of the Government of India Act, 1915. It must be remembered that in India the electorate which will be represented in the Legislative Assembly is a very small fraction[1] of the people of India, and this fact alone makes more delicate and difficult the duties of the Secretary of State. But the essential feature of the situation under the reforms scheme should be the deliberate and honourable acceptance of the view that, if the Government of India has the support of the representatives of the people, it lies with those who advise interference to make out a substantial and grave cause of interference.

5. If, on the other hand, it is felt necessary by the Government of India to disregard the wishes of the Legislative Assembly, there will rest on the Government the burden, not merely of satisfying the Secretary of State of the advisability of their action, but also that causes existed which justified them in insisting upon carrying it out, despite the wishes of the Assembly. The Government of India will thus have every reason to bring its action more and more into accord with Indian feeling, while retaining its official character, and a real, if modest, step will have been taken towards the consummation of the ideal set in the declaration of 20th August 1917. To go further than this would violate the principle of the official character of the government postulated by the reforms report; to concede less than this would, in my opinion, justly be regarded as falsifying the legitimate aspirations founded upon the scheme and language of that Report. I recognise that my proposals may be deemed dangerously to weaken the power of the Government of India, but I am convinced that this opinion is erroneous, and that the just authority of that Government will suffer no impairment, but rather be enhanced, by being brought into closer touch with Indian feeling. The justification of British rule in India is that it promotes the interests of the Indian people, and it would be a calamity if any encouragement were given to the idea that the Government of India should not aim earnestly at working in harmony with those who from their position must often be better judges of Indian interests than the most benevolent official Government.

Head I.—The existing system of Home administration of Indian affairs, and the relations between the Secretary of State, or the Secretary of State in Council, and the Government of India.

A.—CENTRAL SUBJECTS.

I.—Legislation.[2]

(1) *Introduction of Bills.*

6. The divergence in principle between my colleagues and myself appears at once in our attitude to the question of the necessity of the Government of India obtaining the approval of the Secretary of State prior to the introduction of legislative proposals into the Indian Legislature. It follows from the principles which I have set out that I would leave a general discretion to the Government of India to introduce legislation into the Legislative Assembly without prior consultation with the Secretary of State save in cases where Imperial interests were obviously affected, namely, bills affecting (*a*) the discipline or maintenance of any part of His Majesty's military, naval, or air forces, and (*b*) the relations of the Government with foreign princes or States. In these matters no Bill can be introduced by a member of the Legislature without the sanction of the Governor-General and there is, therefore, no difficulty in making effective the rule of prior consultation with the Secretary of State. In any other case, of course, the Government of India would be entirely at liberty to apply to the Secretary of State for advice and help, and doubtless it would often do so, but the only rule I would lay down would be that the Government of India should keep the Secretary of State fully informed (by telegram in cases of importance) of all legislative proposals introduced into the Indian Legislature, whether proposed by their authority or by private members.

7. My colleagues, however, are not prepared to make any further concession than the substitution of prior consultation with the Secretary of State for prior consent, and the grant of permission to the Secretary of State to define the cases

[1] *See* Cmd. 141, p. 5.

[2] *See also* II. Finance.

where he considers such prior consultation necessary from time to time, on the understanding that he may vary the list by addition or subtraction as he deems fit. The former change is one in which I entirely concur, but it is important to recognise that, while the new phraseology is preferable to the old, there will in substance be no alteration in the effectiveness of the control of the Secretary of State; the advice of the Secretary of State in the ultimate issue, if it is pressed, is indistinguishable from a command; no Secretary of State could accept responsibility for his statutory duties towards India if he could not rely on the Governor-General deferring in the ultimate issue to his opinion as the representative of His Majesty's Government. The latter change amounts to no more than a pious intimation of opinion that decentralisation is necessary, a view which hardly rises above the level of a platitude, and a confession of the incapacity of the Committee to deal with the point at issue. The suggestion, however, that the Secretary of State is to be free to increase his control as well as relax it from time to time can only be based on a distrust, which I do not share, of either the Government of India or the Indian Legislature. A final *reductio ad absurdum* of the position appears to me to be afforded by the fact that any private member may introduce at pleasure measures which the Government of India must submit to the Secretary of State and thus, if it so desired at any time, the Government could secure the presentation of its views in this form without reference to the Secretary of State. The importance of the point lies in the fact that if Bills continue thus to come home for prior examination there is retained a large amount of unnecessary work to be performed by the India Office and the impression is fostered that as in the past it is the duty of the India Office to act as a normal part of the machinery of Indian government instead of exercising its role of high control. Moreover it seems to have been forgotten by my colleagues that the value of prior consultation is indefinitely limited by the introduction of a fully representative element in the Legislature, which will result in far freer amendment than hitherto of Indian legislation. Nor can I think that it is altogether consistent with the dignity of the Government of India that it should be subjected to a closer degree of supervision than the Governments of the Crown Colonies.

8. The position, however, differs entirely when it is not a question of carrying legislation through the Legislative Assembly, but when it is intended that the Governor-General in Council should certify a measure as essential for the safety, tranquillity, or interests of some part of British India or on the ground of emergency, and secure its enactment by the Council of State without the assent of the Legislative Assembly; or when the Governor-General in Council proposes to make regulations for some part of British India under section 71 of the Government of India Act; or when the Governor-General exercises the extraordinary emergency power of legislating by ordinance. In all these cases, in which *ex hypothesi* the matter is being withdrawn from the cognisance of the representatives of the people I consider that prior assent should always be obtained, by telegraph if necessary. I suggest therefore that the Governor-General should be instructed that, save in the case of absolute necessity, no measure should be certified for enactment by the Council of State, and that no regulation or ordinance shall be passed, unless the Secretary of State has previously approved of the substance of the proposed measure on the ground that it is essential in the interest of the peace, order, and good government of India. Unless this arrangement is adopted, I consider that there is grave risk in leaving the liberties of British India at the mercy of legislation by ordinance or regulation, and I cannot believe that my recommendation in this regard is really, as my colleagues seem to hold, more than an affirmation of existing usage.

(2) *Assent to, and Reservation of, Bills.*

9. It is with much pleasure that I find that the majority of my colleagues concur with my view "that assent should be refused to Indian legislation accepted by the majority of the non-official members of the Legislative Assembly only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order, and good government of India, or the interests of some part of the Empire other than India, require him to secure reconsideration of the matter at issue by the Legislative Assembly." It is hardly necessary to emphasise the real nature of the recognition thus accorded to the importance of the Legislative Assembly as expressing the popular will; on the other hand, the Secretary of State

will be bound to act with due regard to Imperial interests in the wide sense of the term, and it is not impossible that, in view of the comparatively restricted character of the franchise, he may be compelled at times to consider whether the Legislative Assembly in a given case really represents the will of the people. This will be a task of great delicacy and difficulty: the occasion for action should seldom arise, since the Government of India can always prevent the passing of legislation unfair to the interests of the classes imperfectly represented in the Legislature; but the principle must be conceded as a necessary concomitant of the imperfection of representative institutions in India for the time being.

10. Objection was taken in the discussion of this resolution in the form given above, in which I moved it, to the specification of the majority of non-official members as being the dominant condition of the operation of the proposal. The reason, however, for this limitation is simple; under the reform scheme, as modified by the report of the Franchise Committee[1] under Lord Southborough, of a total membership of 120 in the Assembly no less than 26 may be officials, and in a conceivable case the officials with the nominated members and but 20 elected members might carry a measure against 60 elected members. In actual practice a measure may not rarely be carried by a majority, while the majority of non-official members are opposed to it. In such a case it would be absurd to place any fetter on the action of the Secretary of State, but in dealing with the measure he will doubtless give such weight as may be appropriate in each case to the fact that the measure has been carried against the views of the elected members.

11. Measures passed by the Indian Legislature will fall in future into two broad classes, those which will be regarded by the Secretary of State as requiring no special examination or scrutiny, and Bills which will call for earnest consideration in the light of the responsibilities which he will still retain. A simple and effective means of discriminating between these two categories of measures has played a large part in the history of the treatment by the Crown of Dominion legislation, and it appears to me that the moment, when India is beginning to enter upon a path which is intended to lead in the future to her achieving Dominion status, is appropriate for adopting the system in India. This can be effected in the first place by providing that the power of reserving Bills which is at present enjoyed by the Governor-General shall be exercised according to His Majesty's instructions, and in the second place by requiring that the Governor-General shall reserve Bills falling under certain classes,[2] it being understood that Bills not falling in the category will normally not be disallowed by His Majesty, while Bills included in any of the classes specified will be subject to scrutiny of a closer nature, and will only come into force on approval by His Majesty's Government.

12. I suggest, therefore:—(1) that section 68 of the Act of 1915 be amended by adding after "the Governor-General may declare" the words "according to his discretion, but subject to His Majesty's instructions" (that he assents to the Bill or withholds assent from the Bill, or reserves the Bill for the signification of His Majesty's pleasure thereon); and (2) that the following instructions be given by His Majesty to the Governor-General:—

"The Governor-General shall not assent to any Bill of the following classes:—

(1) Any Bill containing provisions which are repugnant to the provisions of the Government of India Act or any other Act of Parliament.

(2) Any Bill containing provisions to which Our assent has been refused or which has been disallowed by Us.

(3) Any Bill which he has been specially required by one of Our Principal Secretaries of State to reserve.

(4) Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by treaty.

(5) Any Bill imposing differential duties.

(6) Any Bill affecting the currency of India or relating to the issue of banknotes.

(7) Any Bill affecting the discipline or maintenance of any part of Our military, naval, or air forces.

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[1] Cmd. 141, p. 82.

[2] The list here suggested is based largely on precedents in the Dominions, details of which are given in my "Responsible Government in the Dominions."

(8) Any Bill affecting the relations of the Government with foreign princes or States.

(9) Any Bill whereby persons not of European birth or descent may be subjected to or made liable to any disabilities or restrictions to which persons of European birth or descent are not subjected or made liable.

(10) Any Bill for the divorce of persons of European birth or descent joined in holy matrimony.

(11) Any Bill of an extraordinary nature and importance whereby Our prerogative, or the rights and property of Our subjects not residing in India, or the trade and shipping of the United Kingdom or any part of Our Dominions other than India, may be prejudiced.

Provided that it shall not be necessary for the Governor-General to reserve any such Bill if it contains a clause suspending the operation of the Bill until the signification of Our pleasure thereupon; or if he has received instructions from one of Our Principal Secretaries of State either to assent to the said Bill or to withhold his assent; or, if he is satisfied that an urgent necessity requires that the said Bill be brought into immediate operation, in which case he is authorised to assent to it, but is to transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto."

(3) *Form of Assent to, and Disallowance of, Legislative Measures.*

13. I desire also to recommend—and this quite irrespective of any decision arrived at as to the future of the Council of India: (1) that the signification of His Majesty's assent to reserved Bills of the Indian Legislature (section 68 of the Act of 1915) and of the local legislatures (clause 10 of the Bill) shall be made in Council, and not through the Secretary of State in Council, and shall then be notified by the Secretary of State to the Governor-General; and (2) that the disallowance of Acts of the Indian and local legislatures, of regulations under section 71 of the Act of 1915, and of ordinances under section 72 of the Act should similarly be signified by His Majesty in Council. In this view my colleagues concur.

II.—Finance.

14. With regard to finance, it is essential to bear in mind that under the Government of India Act (section 67), no measure may be introduced into the Indian Legislature affecting the public debt or public revenues of India or imposing any charge on the revenues of India without the previous sanction of the Governor-General, and that, under the terms of the Montagu-Chelmsford scheme, it is intended that, while the budget will be introduced in the Legislative Assembly, it will not be voted by that body, which may, however, exercise criticism upon it by way of resolutions.[1] There can, therefore, be no possibility either of private members forcing upon the Government the consideration of financial measures to which it is opposed or of the Assembly coercing the Government by means of the refusal of supplies. There is, therefore, need of some conventions in practice, if the association of the Legislative Assembly with the form of government, which is admittedly desirable, is to be carried out.

15. From the point of view of public opinion in India this question suggests itself especially in the form of the demand for fiscal autonomy, which is claimed partly on grounds of national self-consciousness with which all must sympathise, partly because it is believed that by means of protecting industrial activity in India might be enormously strengthened to the advantage primarily indeed of India, but secondarily also of the whole Empire. The Government of India is credited by Indian opinion with sharing the aspiration of India in this regard, and the proposition has accordingly been pressed upon us that in fiscal matters, if a proposal of the Government of India is approved by the Legislative Assembly the Secretary of State should have no power of intervention. The Government of the United Kingdom can rely, it is argued, that the Government of India will not bring forward any proposals which would run counter to the interests of the United Kingdom. It seems to me, however, impossible to accept such a doctrine as constitutionally tenable. The members of the Government of India, whatever their nationality in the narrower sense of the term, are agents of His Majesty's

[1] Cd. 9109, pp. 228, 229.

Government for the administration of the affairs of India; they are not experts in the affairs of the United Kingdom, and they cannot be expected to form an impartial or accurate account of the extent to which fiscal legislation in India may affect the United Kingdom. The only authority which can decide whether or not India is to enjoy fiscal freedom and in what measure is the British Cabinet, subject to the control of Parliament, and it is impossible to lay down any constitutional principle in this regard as obligatory for acceptance by Parliament. If, indeed, India were in the position of ability to stand alone like Canada, or even to accept full responsibility for the control of all her internal affairs, no question would arise as to her right to autonomy in fiscal policy, but as matters stand it is impossible to deny to the Government of the United Kingdom the means of securing that no hasty steps are taken which might bring the Empire into difficulties with foreign nations, or result in a severe strain on the relations between India and the United Kingdom. On the other hand, I cannot but feel that, though the logical strength of the Indian demand for fiscal autonomy is far from great, every consideration of practical statesmanship, and of the traditional generosity of the people of the United Kingdom, tells in favour of the grant in practise to India of the same measure of freedom as is accorded to the Dominions. But the grant must be frankly made by the Government of the United Kingdom; it cannot with any propriety be conveyed in the indirect form of an acceptance of the doctrine that the members of the Government of India are true representatives of the interests of the United Kingdom in all spheres.

16. I consider, therefore, that in the case of all taxation measures, while the prior assent of the Secretary of State to their introduction into the Indian Legislature should not be necessary, the Government of India should be required to submit for the information of the Secretary of State the substance of any proposals which they intended to introduce into the Legislature, in sufficient time to permit of his making any observations on the proposals which he deemed desirable on Imperial grounds. I cannot share the view of some of my colleagues that it is any part of the duty of the Secretary of State to criticise financial proposals of this kind on grounds of mere internal interest. I do not share the belief that the Secretary of State is ever likely to have at his disposal at home advice of such quality as to justify him in seeking to become the source of fiscal legislation for India, and interference of this kind would, I am sure, be injurious alike to the Government of India, to the Legislative Assembly, and to the Secretary of State. His one duty should lie in considering taxation proposals from the broad standpoint of Imperial and international relations, and, if he decides on some ground of this kind to take exception to proposed legislation, his intervention would bear an entirely different character and acquire much greater importance than if he normally allowed himself to become the mouthpiece of criticisms by retired officials of the progressive ideas of their successors in office.

17. On the other hand, I regret that my colleagues have determined to claim previous consultation in the case of measures not only of taxation but of expenditure, whether or not involving taxation or borrowing. If it is limited to the case of expenditure involving taxation or borrowing, then, apart altogether from the illogical character of the proposal, it seems to me to be based on a fundamental error, the view that, if India engages in rash borrowing, the United Kingdom will in some measure become responsible for its finances. No countenance should, I suggest, be given to the idea that the debts of India have any significance for the United Kingdom. The argument by which my colleagues appear to have been moved seems to be that, as the Secretary of State plays a part in the process of borrowing money in the United Kingdom, it is necessary that he should control any expenditure which is likely to render borrowing necessary. If, however, the argument were to be pressed to the logical conclusion, the result would be to insist that all expenditure should remain permanently under the full and detailed control of the Secretary of State. But in point of fact, the true function of the Secretary of State in regard to borrowing should be treated as one of agency only, the work to be transferred as early as possible to an agency in London of the Government of India, or, preferably, to a State Bank,[1] just as the financial business of the Commonwealth of Australia is transacted through its own Bank. Every consideration of constitutional propriety and practical advantage points to placing on the

[1] Compare Cd. 7236, pp. 75–7.

Government of India, subject to the control of the Legislative Assembly, responsibility for expenditure, and I suggest the adoption of the following principles in the early years of the operation of the reform scheme :—

(1) That all the proposed expenditure of the Government of India shall be submitted to examination and criticism by the Legislative Assembly.

(2) That as far as possible the estimates submitted shall be framed to distinguish between normal recurrent expenditure and extraordinary expenditure, as in the case of (1) a reorganisation on an increased scale of, or the creation of, a branch of the public service, and (2) public works of special importance and cost.

(3) That, when proposals are approved by the Legislative Assembly, the Secretary of State should overrule them only if satisfied that he cannot accept them consistently with his responsibility to Parliament for the peace, order, and good government of India.

(4) That, when proposals are disapproved in whole or in part by the Legislative Assembly, the Secretary of State should approve them, with such modifications, if any, as he thinks desirable, only if satisfied that he cannot otherwise perform his duty to Parliament.

(5) That, in order to provide an effective substitute for the detailed financial control hitherto exercised by the Secretary of State in Council, it is necessary that—

(1) the Audit Department in India should be given a more independent position and the scope of the audit widened;

(2) an annual report on the account of the preceding year should be presented to the Legislative Assembly by the Auditor-General, who, in drawing up the report, should follow the principles adopted in the preparation of the reports of the Comptroller and Auditor-General in the United Kingdom;

(3) the report of the Auditor-General should be considered by a Public Accounts Committee of the Legislative Assembly, and any matters arising out of it should be brought by the Committee before the Assembly in the form of resolutions;

(4) the report of the Auditor-General, together with any observations on it by the Public Accounts Committee, and any resolutions of the Legislative Assembly, shall be transmitted by the Government of India to the Secretary of State, who may issue such decisions on the matters involved as he considers necessary to secure the safeguarding of the revenues of India.

III.—Administration.

18. On this head I recommend :—

(1) That administrative decisions of the Government of India, acting in accordance with the wishes of the majority of the non-official members of the Legislative Assembly, expressed by resolution or otherwise, shall be revised by the Secretary of State only when he considers it imperative to do so in the interests of the peace, order, and good government of India, or of some part of the Empire other than India.

(2) That in any case in which a resolution is passed by the Legislative Assembly, to which the Government does not deem it desirable to give effect, a special report shall be made to the Secretary or State, in order that he may give any directions which he thinks fit regarding the matter at issue.

19. The first of these recommendations failed to meet with the approval of all my colleagues in so far as it makes the operation of the rule conditional on the majority in the Assembly being composed of non-officials; but I confess that I am unable to see why the Secretary of State's decision should be fettered in any way because a majority has been obtained in the Legislative Assembly by the use of the solid block of 26 official votes. Doubtless in such a case there would be little motive for intervention by the Secretary of State, but there is no constitutional ground for laying down any principle in the matter.

20. The second of these recommendations has been criticised on various grounds. It has been objected that in matters of this nature a special report would certainly be made, and that the recommendation is therefore superfluous. I would reply that, even if the assumption were true,[1] there would be no harm in making it a clear obligation, and that in any case the recommendation goes further, since it expressly contemplates that the Secretary of State shall consider each instance on its merits, and issue directions if he thinks fit. This feature of the recommendation is the ground of another criticism, as it is held that such a rule would weaken the position of the Governor-General in Council. I do not, however, accept as valid this objection, since it rests on a conception of the predominant character of the Government of India which I cannot reconcile with any constitutional form of administration.

B.—PROVINCIAL SUBJECTS.

21. The question of the position of the Secretary of State in regard to provincial subjects is one which appeared to me to fall definitely within the limits of the Terms of Reference, and all doubt on the matter was removed by the communication in a letter of May 13th of the views of the Secretary of State on the topic. Mr. Montagu wrote:—

> "In considering the relations between the Secretary of State and the Government of India, your Committee is concerned—
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> (1) with the duties of the Government of India in relation to central subjects, for the administration of which the Government of India is, and is to remain, directly responsible; and
>
> (2) with its duties in relation to provincial subjects, the administration of which is entrusted to provincial governments, over which the Government of India exercises, and is to continue to exercise, a certain measure of control."

22. At the same time Mr. Montagu expressed the opinion that, while it was best for the purposes of the inquiry to assume that the Government of India would continue to be the normal intermediary between the Secretary of State and local governments, "if there are special matters in respect of which your Committee find reason to think that the normal arrangement should be departed from, and that local governments should be brought into direct relations with the Secretary of State, I do not wish them to feel themselves bound to such a strict reading of the reference as would debar them from making recommendations accordingly."

23. As it is the purpose of the Montagu-Chelmsford[2] scheme that responsible government should first make its appearance in a certain sphere of provincial subjects, I confess that it appeared to me from the first, as will be seen from the memorandum annexed to this report, that this subject was one which demanded our most careful attention, and that the evidence taken by us should be directed largely to this topic in its various aspects. I regret that my views were not shared by the majority of the Committee, and that in the ultimate result they have been unable even to discuss the proposals which I laid before them. Their own views as expressed in paragraph 18 of their report are so hedged with reservations as to evade serious criticism; nor, indeed, in the absence of discussion, am I at all certain that I wholly comprehend the basis or intention of my colleagues' views. I desire, however, to deprecate strongly any suggestion that the process of relaxation of control from above is to proceed at a varying rate in the eight Governors' provinces. Nothing, in my opinion, would be more injurious to the unity of India than the decision to divide the territory into provinces in different stages of progress to self-government, nor could any method of creating inter-provincial jealousy and ill-feeling be devised more effective than the grant to Bombay of a measure of freedom denied to the Punjab, or the concession to Bengal of rights withheld from Bihar and Orissa. In the absence of the evidence which I desired to have taken the conclusions which I have arrived at have necessarily been formed without full consideration of one aspect of the problem, the suggestion that in certain classes of

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[1] It was one of the difficulties of the Committee that no member of the Government of India was available to give evidence before it even on such important issues as the effect on that Government of the working of the Council system.

[2] *See also* Cmd. 175, p. 2.

matters there should be direct relations between the Secretary of State and local governments. It must be remembered that in certain questions there is already direct communication between the governments of Bengal, Madras and Bombay and the Secretary of State, and that the reform scheme, by converting Lieutenant Governorships into Governorships, inevitably raises the question whether the Governors of the other provinces are to be placed in this regard in a position of inferiority to the Governors of Bengal, Madras and Bombay.[1] It would doubtless be possible to make out a strong case for placing the legislation of the provinces, at least in transferred subjects, under the direct control of the Secretary of State, who would, of course, be able to consult the Government of India on such legislation in its bearing on the interests of other provinces or of India as a whole. The objections to such a proposal are also obvious, and I assume that the Joint Committee, by which the Bill introduced by the Secretary of State will be considered, will investigate thoroughly the whole topic.

24. The recommendations, which I now submit in the form in which I laid them before my colleagues, are based on two assumptions. In the first place, I assume that, in regard to transferred subjects, there will at once be brought into force a scheme of true ministerial responsibility in general conformity with the proposals of the Montagu-Chelmsford Report as modified by the report of the Functions Committee,[2] which adopts the only sound principle that a minister can only hold office with the goodwill of the Legislature (technically at the pleasure of the Governor). To avoid misapprehension, however, I must point out that in one respect the report of the Functions Committee presses, to an extent with which I cannot concur, the doctrine of the responsibility of a minister. In cases in which the functions of reserved and transferred departments overlap, or where the action taken in one department is such as to affect the interests of the other, the Governor is necessarily given the final voice to decide what action is to be taken by a transferred department. The Functions Committee hold that the minister must then either accept the decision of the Governor, in which case he "will be responsible for the action taken and will have to defend it in the Legislative Council," or, if he declines to accept the position, must be dismissed by the Governor, who will then be set the extremely difficult task of finding another minister. There is, however, a third course of action open to ministers: they can follow colonial precedents, as admirably set out in the classic memorandum[3] of the Hon. J. Ballance to the Governor of New Zealand of 5th August 1892; acquiesce in the Governor's decision in the particular measure, but decline responsibility for it, and remain in office so long as they have the confidence of the Legislature: "if it be the right and duty of the Governor to act in any case contrary to the advice of his ministers, they cannot be held responsible for his action and should not feel themselves justified in retiring from the administration of public affairs." Such a doctrine is doubtless incompatible with the full development of responsible government which reduces the functions of a Governor to acceptance of ministerial advice, but it is far more consonant than the view of the Functions Committee with the measure of self-government proposed for introduction into India, and, if it is accepted by Indian political opinion, it may smooth the way of the working of the reforms scheme.

25. In the second place, I assume that the modifications in the relations between the Government of India and the local Governments necessary to make the recommendations effective would be carried out, if the recommendations were adopted.

26. My recommendations are:—

I. LEGISLATION.

(1) That the previous sanction of the Secretary of State to the introduction of Bills into local legislatures should be required only in the case of:—

(*a*) Bills affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces;

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[1] *See* Government of India despatch, 5th March 1919, para. 36. Cmd. 123, p. 12.

[2] Cmd. 103.—The views of the Government of India (despatch of 5th March 1919) on this head are open to serious criticism. In special the power ascribed to the permanent head of a department by para. 97 is incompatible with responsible government in any real sense.

[3] "Selected Speeches and Documents on British Colonial Policy," ii, 100.

(*b*) Bills affecting the relations of the Government with foreign princes or States;

(*c*) Bills which it is proposed to subject to Grand Committee procedure.

(2) That the Governor-General shall be instructed to refer for the decision of the Secretary of State any application for permission to introduce legislation[1] into a local legislature to which he considers it undesirable to accede, and that permission to refuse the application should be accorded only when the Secretary of State is satisfied that the discussion of the matter in the Legislature would be prejudicial to the peace, order, and good government of India, or to the interests of some part of the Empire other than India.

(3) That the Governor-General shall be authorised, subject to His Majesty's Instructions, to reserve Bills of local legislatures and shall be instructed to reserve Bills of the classes enumerated above (para. 12).

(4) That assent to Bills passed by local legislatures shall be withheld only in cases in which in the opinion of the Secretary of State the coming into force of the Bill would be prejudicial to the peace, order, and good government of India or to the interests of some part of the Empire other than India.

(5) That the approval of the Secretary of State shall be requisite for the withdrawal by the process of certification of any legislative proposal from the control of the local legislature, and its reference to a Grand Committee.

[These rules would apply irrespective of whether the matter in question was a transferred or a reserved subject.]

II. Finance.

That the principles set out in para. 17 above shall be applied with the necessary modifications to provincial finance, and that the approval of the Secretary of State shall be necessary in any case in which the Governor desires to issue a certificate in respect of expenditure on a reserved subject which has been disapproved by the Legislature, or to authorise expenditure for some purpose for which no provision has been submitted to, or approved by, the Legislature.

III. Administration.

(1) That the Governor-General in Council shall not overrule any decision of a Governor acting with his minister(s) in relation to a transferred subject without the approval of the Secretary of State, and that such approval shall only be accorded when necessary in the opinion of the Secretary of State to secure the peace, order, and good government of India, or the interests of some part of the Empire other than India.

(2) That the same rule shall be applicable in the case of a decision taken by the Governor in Executive Council when acting in accordance with the wishes of the majority of the non-official members of the local legislature, expressed by resolution or otherwise, in regard to a reserved subject.

(3) That a report shall be made for the consideration of the Secretary of State in any case in which the Governor in Council does not consider it expedient to give effect to a resolution of the local legislature regarding a reserved subject.

(4) That disputes between minister(s) and the Governor as to the nature of subjects as reserved or transferred, and as to action to be taken as regards transferred matters consequent on action taken in reserved matters and *vice versâ*, shall be referred, if so desired by minister(s), for the decision of the Secretary of State.

(5) That a Governor shall not, without the approval of the Secretary of State, decline to accept the advice of a minister in regard to a subject under his administration, unless he is satisfied that he can, in the event of the resignation of the minister, obtain another minister prepared to accept

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[1] For the cases where permission is necessary under the reform scheme *see* clause 8 (3) of the Bill. The restrictions of subheads (*g*) and (*h*) therein seem needless, as unduly complicating legislation, and the practical working of the whole scheme suggests obvious difficulties. *See* Cmd. 176, pp. 26–30.

responsibility for the policy laid down by the Governor, and that approval should only be accorded by the Secretary of State when he is satisfied that in the interest of India or the Empire it is essential that, for the time being, the control of the transferred subject(s) in question should revert to the Governor in Council.

C.—THE PUBLIC SERVICES.

27. I much regret that my colleagues in the case of the important questions affecting the public services in India have not seen their way to take the evidence, and make the investigations, necessary to enable them to come to any decisions on the matter. The two paragraphs following represent the opinions which I formed and which I submitted to them. They are based partly on general constitutional grounds, partly on the knowledge which I have of the Indian services.

28. As regards the public services of India, I am strongly of opinion that there are grave constitutional objections to regulating their conditions of service by an Imperial Act or by regulations made under it, thus withdrawing from the legislatures of India the control of legislation regarding these services. Moreover it is essential in the interest of decentralisation that, as far as possible, the Secretary of State should abandon detailed control of the conditions of service of officers in India, and that changes in the existing conditions should be subjected to the criticism of the legislatures under safeguards against unjust treatment of members already in the services. The proposal[1] to compel the Secretary of State in Council to create a Public Service Commission, and to assign to it such functions as he thinks fit regarding the public services in India, appears to me to be wholly incompatible with the fundamental principles of the reform scheme, and the proposal to[2] provide by Imperial Act that no office may be added to, or may be withdrawn from, the public service, and that the emoluments of any post may not be varied without the concurrence of a finance authority designated by rules made by the Secretary of State in Council is, I think, an injudicious attempt to establish by legislation which cannot be varied by local legislation a principle of undoubted value, but one which cannot properly be given a place in an Imperial Act. These views, of course, rest on the belief that all these matters should be regulated by local legislation, and not enacted as constitutional laws by Parliament.

29. I recommend, therefore:—

(1) That, as a necessary measure of decentralisation, the conditions of service of officers of the public services should be regulated by legislation, passed, before the coming into operation of the reform scheme, by the Indian Legislative Council in the case of those services for which the Secretary of State recruits the whole or a considerable part of the members, and by the local legislatures in the case of other services.

(2) That such legislation may be repealed or varied from time to time by the Indian Legislature or by local legislatures, subject in the latter case to the previous sanction of the Governor-General, if it is proposed to repeal or vary any legislation of the Indian Legislative Council or Legislature.

(3) That legislation as to the public services enacted by the Indian or local legislatures should be refused assent only when the Secretary of State is satisfied that the enactment is prejudicial to the peace, order, and good government of India or diminishes unduly the rights and privileges of existing members of the public services.

(4) That (save in the case of persons already in the public service who should be secured in any right of appeal to the Secretary of State which they now enjoy) provision should be made in the legislation to be passed that no appeal from a public servant in India shall lie to the Secretary of State except in the case of a proposal to remove from the service, or of an order affecting the emoluments, or pension of, an officer appointed, or selected for appointment, to the public service by the Secretary of State.

(5) That the Indian Legislature and local legislatures should be authorised, with the previous approval of the Secretary of State, to repeal or vary the provisions of section 19 and of parts VII. and VIII. of the Government of India Act.

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[1] Bill, clause 26, which is framed in a very remarkable manner.

[2] Bill, clause 27 (2).

Head II.—(a)–(c) *The Constitutional Powers, Composition, and Working, in relation to Office Procedure, of the Council of India.*

30. As I am unable to concur with the recommendations of my colleagues on these questions also, I have to submit, as embodying my views, a series of proposals, which I laid before the Committee, for the total abolition of the Council of India and for changes in procedure consequential on this step. In the main these suggestions hardly require detailed exposition, but I deem it desirable to explain in some detail the grounds of my opposition to the continued existence of the Council of India or the substitution for it of a statutory permanent Advisory Committee as recommended by the majority of my colleagues. The recommendations were :—

(1) That, in the opinion of the Committee, in view of the decision of His Majesty's Government to take steps to secure the gradual realisation of responsible government in British India, it is necessary that the powers and authority with regard to the Government of India now vested in the Secretary of State in Council should be transferred to the Secretary of State, the date of transfer to be determined by Order of His Majesty in Council.

(2) That, having regard to the great diminution in the detailed control over Indian Government which will result from the operation of the reforms scheme, the Secretary of State should normally be able to rely on the permanent staff of his Department for the assistance necessary to him in the discharge of his responsibility to Parliament, and that in cases in which he feels the need of further advice he should have recourse to the aid of Committees appointed for specific purposes from time to time.

(3) That, in order to facilitate the working of the Committee system, the Secretary of State should form a panel of persons qualified to advise on matters affecting India, by reason of residence therein or knowledge of Indian affairs, who may be willing to undertake the duty of advising the Secretary of State when invited to do so, and that members of Committees should normally be chosen from this body. The services of members of the panel should be given gratuitously, but travelling expenses and subsistence allowance at the usual Civil Service rate should be allowed to members summoned from a distance to London.

(4) That the proceedings of the Committees should, unless otherwise determined in any particular case by the Secretary of State, be confidential and that it should rest with the Secretary of State to decide whether or not the recommendations made should be published.

(5) That the existing members of the Council of India should receive equitable compensation for the curtailment of their term of office.

31. Owing to historical causes, its inheritance of the duties of the East India Company and of the Commissioners for the affairs of India, the Council of India performs functions far more extensive than duties of supreme control such as *primâ facie* would be performed by the Secretary of State *vis-à-vis* so elaborately organised and strongly manned a body as the Government of India. The composition of the Council as representing Indian official experience at once qualifies and tempts it to improve in detail, and in a sense to do over again, work already done in India. That much useful service has thus been rendered in the past is obvious; no work is so perfect that it cannot be improved by expert revision, but it is open to doubt whether, taken on balance, the value of the process of revision in detail has been worth the losses entailed by it. In the first place the conservatism natural to retired officials has acted sometimes, it may be feared, as a barrier in the way of useful reform. In the second place, the natural tendency to delay in the action of the Government of India has been injuriously fostered by the delays of the India Office under the Council system of procedure. Rapidity in the performance of departmental work in the India Office itself inevitably suffers from the feeling that, as the matter must go before the Council, there is bound to be delay in any event. But, whatever the merits of the system in the past, I am unable to see any abiding place for it under the reform scheme when its proposals have come into operation. The Montagu-Chelmsford scheme imposes on the Secretary of State a process of progressive abnegation of his power of superintendence, direction, and control of the Government of India, and the abolition of the instrument by which in the past a close and detailed control and revision have been exercised in respect of Indian affairs is in my opinion requisite as a necessary preliminary

to, and a conclusive manifestation of the purpose of His Majesty's ministers to secure, the gradual realisation of responsible government in British India. The suggestion has, indeed, been made on high authority that the Council would serve directly the useful purpose of assisting the Secretary of State to relax his control of Indian affairs, but I am unable to accept so extremely paradoxical a view.

32. I cannot, however, see any advantage in the abolition of the Council only to revive it in the no more inviting form of a permanent Advisory Committee. I gather that in the view of my colleagues this body would in practice perform very much the same duties as the Council and clearly on any other hypothesis it would be impossible to justify a proposal to place on the British taxpayer the burden of an institution, of which the initial cost would be in salaries alone £16,800 a year.[1] But the change in the statutory position of the members would lower greatly the prestige of the Committee and diminish its attraction for men of high ability in the Indian services. Moreover, it would be extremely difficult to secure for it the service of Indians of first-rate ability, who under the reform scheme will find in India the really appropriate sphere for their activities in promoting the political growth of their country.

33. Under the reform scheme, therefore, I have no hesitation in holding that in the performance of his diminishing duties the Secretary of State should be able to obtain all the aid he requires primarily from the permanent staff of his department (who receive now at least as high salaries as officials in other departments with greater responsibilities), and from expert sources such as the brokers of the India Office and the Bank of England.[2] In matters in which further advice was deemed necessary, *e.g.*, currency questions or other issues involving special knowledge, he would have recourse to Committees appointed *ad hoc*. To enable him to act thus no statutory provision would be either necessary or desirable, but it might in practice prove convenient to keep a panel of persons willing to advise on specified topics, if invited to do so. This procedure might result in more use being made than at present of the expert knowledge possessed by officers of the Indian services, whether retired or on leave of absence, without involving to the Exchequer any greater cost than that of the of the travelling expenses of officials not resident in the London area. It is, I think, undoubtedly a defect in the present system that, as the Council of India is supposed to provide the Secretary of State with expert information, there is too little encouragment to resort to the advice of those officials who are not in its number, although the limited character of the membership of the Council inevitably prevents it representing fully and adequately the needs of the less important provinces such as Burma.

34. The case for the retention of a permanent body to advise the Secretary of State is supported by the arguments that (1) the Secretary of State cannot effectively perform his duties without the advice of experts with actual Indian experience, and that (2) if he were deprived of the support of such a body, he would feel himself unable to venture to override the views of so important a body as the Government of India. Neither argument appears to me capable of carrying conviction. The first contention rests on the erroneous assumption that it is the duty of the Secretary of State to do over again the work of the Government of India, whereas his real function is concerned merely with the supreme control over government in India, and for that purpose all the detailed knowledge of Indian affairs which is necessary can easily be obtained—as in the Colonial Office—from the permanent staff (which, it may be added, will in the future as in the past doubtless include men who have actually served in India) and from Indian officials on leave or retired. The second argument can hardly be taken quite seriously. The spectacle of a Governor-General and his Council, the official subordinates of the Secretary of State, defying a member of His Majesty's Government would, indeed, be unedifying, but I entertain not the slightest doubt that the experiment once made would not be repeated. The only substance in the argument lies in the fact that the disappearance of the Council would put an end to one of the admitted defects of the present system, the tendency of the Council to move

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[1] As the salaries and allowances suggested by my colleagues are stated on the pre-war basis, the initial cost could not fall below £21,000 for 12 members, as against a present maximum cost of £14,000, if the Council were increased to its possible maximum of 14 members. I find it difficult to reconcile the recommendation with the impressive appeal for economy made by Mr. Austen Chamberlain in the House of Commons on 4th June.

[2] The Committee were assured by the evidence of the great services rendered by these bodies.

the Secretary of State to overrule the Government of India in minor matters, to which testimony was borne by Mr. A. Chamberlain. In the absence of a permanent body anxious naturally to prove its utility by suggesting improvements on the proposals of the Government of India, it would, I trust, become the rule for the Secretary of State to refrain from interference save when he was satisfied that some real principle was involved, in which event his intervention would carry all the more weight because his authority was not frittered away by interference on lesser matters.

35. As regards the precise moment for the disappearance of the Council, I readily recognise that it would be unwise at present to seek to determine a date, and I would, therefore, leave it to be fixed in the light of experience by His Majesty in Council, my assumption being that the step would be taken when the reform scheme has been brought into full operation. The Secretary of State would thus be assured, during the critical period of the coming into force of the reforms, of the support of the councillors on whose advice he has been wont to rely, and, should events in India develop in directions which were unexpectedly full of anxiety, the abolition of the Council could for the time be held over. The position adopted in this regard by my colleagues appears to me to be an effective *reductio ad absurdum* of their scheme for an Advisory Committee. They contemplate in paragraph 20 of their report that, as soon as the Government of India Bill receives the royal assent, an Order in Council will be issued transferring to the Secretary of State the powers and authority in regard to the government of India hitherto vested in the Secretary of State in Council, and (paragraph 28) that the Bill will provide for the repeal of the present clauses affecting the Council, and for the establishment of an Advisory Committee. It is, however, impossible that such a Committee as they contemplate should come into being for a considerable period; the Indian members selected on the panel system who are to form an essential part of the whole cannot be chosen until the franchise for the Legislative Assembly has been decided upon and enacted by rules, and until the elections to the Assembly have been completed, and the members of that body have chosen the panel. The Secretary of State will thus immediately on the passing of the bill be deprived of the services of his Council at the very moment when, if ever, it ought to be of special value to him, and will be unable for a considerable period to constitute an Advisory Committee under the terms of the statute. If, however, my colleagues really believe that in the critical moment of carrying into effect the reform scheme the Secretary of State ought to stand alone, I confess I find it incomprehensible that they should insist that, at a time when his burdens will be far less heavy, he must have recourse to the counsel of an Advisory Committee. I presume that the members of the Council of India who are thus summarily to be deprived of a statutory office of emolument are to receive compensation on an adequate basis, and that this compensation will be paid from Indian funds, but my colleagues in their report have not thought fit to deal with the matter. Nor on grounds of public finance can I see any justification for a scheme which necessitates the payment of compensation by India to those members of the Council who are not offered, or naturally enough do not care to accept, membership of the Committee, and calls upon the British taxpayer to pay for services of inferior character a sum in excess of that hitherto paid by India.

36. There remains, however, one argument which has been adduced in favour of the retention of the Council and the preservation of the right of its members by a majority to control expenditure which the Secretary of State desires to authorise. Difficult questions have arisen in the past, and may—indeed must—arise in the future, regarding the proportion of the cost which India should bear in respect of matters in which the United Kingdom and India have a common interest; obvious examples are presented by army charges and expenses connected with Persia, Mesopotamia, Thibet and China, and other heads can easily be suggested, such as a contribution to the naval expenditure of the Empire. It is admitted that the evidence shows that, in matters decided by the British Cabinet, the Council of India in the past has felt bound to defer to the superior moral authority of that body, and has *pro tanto* abnegated the unfettered use of the powers conferred by the Government of India Act (section 21); minor instances such as the charging to India of the cost of a ball in honour of the Sultan of Turkey suggest that, even in matters not of Cabinet importance, the scrutiny of the Council has fallen short of any high standard of care for Indian interests. It has been argued, however, that this state of things may not continue, and in special that, if the composition of the

Council were revised so that half the members were Indian, the Council might serve as a most useful means of checking the imposition by the United Kingdom of unfair burdens on India, pending such time as the full control of Indian expenditure is handed over to the Legislative Assembly.

37. I have the fullest sympathy with the desire to ensure a just apportionment between India and the United Kingdom of charges arising out of matters in which they have common interests. But I cannot agree that the device proposed for this end could possibly be regarded as satisfactory. The idea that the Council, if composed, as at present, predominantly of retired members of the Indian services, should assume the duty of setting itself up in opposition to the Cabinet of the United Kingdom is not without an aspect of absurdity, nor would the position be substantially different if the majority which overruled the Secretary of State were predominantly Indian in composition. The duty of safeguarding Indian interests in these matters rests with the Government of India and the Legislative Assembly. It is for the latter body in public session, and not for nominees of the Secretary of State sitting in London and debating in strict secrecy, to determine the attitude to be taken by India towards such issues as a contribution for naval defence, and the constitutional weight which would attach to a declaration of opinion by the representatives of the voters of India would be incomparably higher than the value which could be accorded to any decision of the Council of India.

38. But, while I cannot accept the control of the Council as an appropriate method of dealing with difficulties of this kind, I do not suggest that it is desirable that it should rest with the Secretary of State to determine, at the pleasure of His Majesty's Government for the United Kingdom, the measure of the burden to be borne by India. Doubtless any such question would be a proper matter for discussion between the members of the Imperial Cabinet, in whatever form that body survives the exigencies of the war to which it owed its creation. I can foresee, however, that even after such a discussion there may be incompatibility of view, and I can only repeat a suggestion which I have elsewhere[1] made in connection with the treatment of disputes between the Government of the United Kingdom and Dominion Governments, namely, that recourse should be had to the arbitration of a Committee of the Privy Council, so constituted as to represent justly the disputants involved.

39. On the details of the proposed composition of the Advisory Committee, I do not desire to comment at length, having regard to the fact that I consider the whole project radically unsound and earnestly trust that it may not commend itself to Parliament. I would observe, however, that it would seem necessary to make provision so as to secure that, if this body were to be abolished at any time, not more than a small sum should be payable as compensation to the members for the termination of an employment admittedly of precarious character. I must also record my conviction that there is a radical error in the attempt at the present state of the development of Indian political life to introduce, or perpetuate, the idea that the presence of Indians on a council or committee sitting in London is the proper means of securing due attention to Indian aspirations. The position of an Indian in such a case is anomalous and extremely difficult, and I do not think that it is really possible for an Indian politician in such circumstances to render services in a manner either satisfactory to himself or profitable to his country. The grant of representative institutions and of a limited measure of responsible government to India has opened up a new and more honourable and effective method in which Indian politicians can serve the best interests of their native land and of the Empire, of which India forms a most important part. In expressing this view I do not desire to ignore in any way the useful work performed by Indian members of the Council of India, but to emphasise the unreality and ineffectiveness of the position to which they were condemned by circumstances. I do not share the view of the majority of the Committee that the Advisory Committee, if formed, should, apart from Indian politicians, consist mainly of members possessing recent administrative experience in India. On the contrary, I would suggest that the Committee should be constituted differently from the existing Council, for the simple reason that it will have different functions to perform, and it does appear to me desirable that a body should be constituted with some reference to its duties.[2]

[1] "Imperial Unity and the Dominions," pp. 165, 166.

[2] This consideration, I think, my colleagues have disregarded unduly in their treatment of Head II. as a whole throughout our investigation.

If, therefore, there were a Committee, I should prefer to see on it financial experts with Indian and British experience, since the Secretary of State will retain a good deal of financial agency work. Nor *a priori* does the presence of a single military expert on the Committee appear to be sufficient to enable it to deal with defence questions, though this aspect does not fall within the purview of this report.

(d) *The General Departmental Procedure of the India Office.*

40. On this head I have to recommend:—

(1) That, on the transfer of the authority and power of the Secretary of State in Council to the Secretary of State, the provisions of sections 5, 13, and 14 of the Government of India Act regarding correspondence should be repealed, and the Secretary of State should regulate by executive orders the mode of conduct of correspondence between the India Office and the Government of India and local governments.

(2) That in framing such orders the Secretary of State should consider the desirability of adopting the classification of despatches followed in the Colonial Office, and that it should be an instruction to the Governor-General and Governors that all matters necessary for a due understanding of questions of government in India must be reported in despatches for permanent record and not merely in private letters to the Secretary of State, a similar rule being adopted as regards communications from the Secretary of State to Governments in India.

(3) That, in order to secure the effective training of members of the staff of the India Office to assume the greater responsibilities involved through the disappearance of the Council of India, the practice by which only the minutes of superior officials are submitted to the Secretary of State should be abandoned in favour of the practice followed in the Colonial and other Offices under which minutes by junior officers are included in the papers placed before the Secretary of State for his decision.

41. It is hardly necessary to defend these recommendations in detail; recent and painful experience has, I think, fully justified the demand that the Secretary of State and the Governor-General alike should be under an obligation not to entrust to the machinery of private letters or telegrams communications which have any official character, however legitimate and desirable may be the practice of keeping in close personal touch by means of informal exchanges of views. It cannot too clearly be realised that there should be in each Department of State a true and full record of public business available to the Secretary of State for the time being.

42. I desire, however, to lay great stress on my suggestion that the India Office should depart from the practice by which only minutes of senior officials are presented for the guidance of the Secretary of State. The true origin of this usage is to be found in the days when recruitment for Government Offices was conducted on principles which secured junior officials without the capacity or intellectual training necessary for the purpose of minuting papers. Under present conditions of entry the maintenance of the rule—however it may shorten the labours of the Secretary of State—is indefensible. It hampers the intellectual development and diminishes the capacity for responsibility of the men affected by it, and it deprives the Secretary of State of the advantage to be derived from contrasted views on topics which *ex hypothesi* are of real interest and importance, since they are submitted for his decision. The continuance of the present practice must, in my opinion, prove detrimental to the attraction of the India Office for men of high attainments, who will prefer to enter other Departments in which seniority is not permitted to suppress ability, if it so desires.

It should be added that I lay the greatest possible stress on this recommendation from the point of view of accelerating the rate of work in the India Office. There is no more effective means of checking the natural tendency of an official to procrastinate (a defect often compatible with real merit) than the knowledge that each paper with which he deals contains a record, which is patent to all into whose hands it passes, of the time which he has kept it in his hands. Any other system, by obscuring the responsibility for delay, acts as a direct encouragement to a defect which public opinion,[1] I think rightly, attributes in a high degree to the proceedings of the India Office.

[1] *Cf. The Times* 31st January 1919.

(e) *The Organisation of the India Office Establishment, and the question of modifying the system of its recruitment so as to provide for* (1) *the interchange of appointments with the Indian Services, and* (2) *the throwing open of a proportion of appointments to Indians.*

43. It was generally felt by the Committee to be impracticable—and there is no ground to suppose that it was desirable—to investigate these questions in any but the most general manner. As the result of this survey, I desire to submit the following recommendations :—

(1) That the progressive extension of responsible government to India will render necessary the restriction of the functions of the India Office to the conduct of political relations with India, and the transfer of all agency work to a High Commissioner for India or other Indian governmental representative; that, in the first instance, communications should be entered into with the Government of India with a view to the transfer to the immediate control of that Government of the Stores Department, the Indian Students' Department, and (subject to any necessary reservation) of the Accountant-General's Department; and that the Government of India should be invited to make suggestions for the transfer to their control of any other agency business of the India Office.

(2) That, as in view of the relaxation of the control of the Secretary of State over the Governments in India, there may reasonably be anticipated a considerable decrease in the number of the India Office staff, and as the necessity of local knowledge on the part of members of that staff will diminish in proportion as the purpose of the reforms is attained, it is not desirable or possible to arrange any formal system of interchange between the India Office and the Indian Services. But that it is desirable, during the period of transition, that the Secretary of State should promote close co-operation between the India Office staff and the Indian Services by appointing, temporarily or permanently, officers of the Indian Services to higher posts in the India Office and by deputing members of the India Office staff on special duty in India, whenever convenient opportunities present themselves.

(3) That it is impracticable to reserve any definite number of posts at the India Office for Indians, but that it is desirable that, in selecting officers of the Indian Services for appointment to the staff of the India Office, preference should be given to duly qualified Indian officials, and that it would be advantageous if one of the Under-Secretaryships or Assistant Under-Secretaryships were filled by an Indian from time to time.

44. On these recommendations, I need only offer a few comments. I trust that the work of separation between agency and administrative and political functions will be undertaken forthwith, and not permitted to languish indefinitely during an exchange of correspondence conducted with the extraordinary deliberation characteristic of official communications with India. I hope also that the transfer of the work of the Accountant-General's Department will be as complete as possible, though some business may have for the time being to be reserved.

45. As regards the appointment of officers of the Indian Services to the India Office, I consider that temporary appointments should normally suffice, but I desire to express the distinct opinion that the Secretary of State should not feel fettered in any way as to making the permanent appointment to one of the high offices in his Department of a distinguished officer from India; from such appointments notoriously great profit has been derived in the past, and I cannot imagine that any Secretary of State will so exercise his power as to depress unduly the position of the members of his office recruited in the usual manner by the Civil Service Commissioners.

46. As regards the presence of Indians in the India Office, it must be remembered that an Indian may compete in the usual examination for entrance to the Civil Service and, if placed sufficiently high in the competition, might be able to enter the India Office if a vacancy chanced to have been announced at the time. Obviously such an event would be extremely rare, and there is in my opinion no reason to suppose that any Indian would be very anxious to enter upon a career in this country which would mean practically permanent exile from his native land. In any case, the policy of reserving a vacancy from time to time for Indians would be wholly impracticable even if it were desirable. I think, however, that it would be well,

during the transition period, if Indian officials were from time to time employed in the India Office. I regret, however, that I cannot agree with the suggestion, which is favoured by some of my colleagues, that a special post should be created for this purpose. It seems to me wholly unjustifiable to impose upon the British taxpayer a charge of this kind; nor do I think that the Indian for whom the needless appointment was created would find much pride or satisfaction in the performance of his unwanted work.

Head III.—Charges on Account of the India Office.

47. I recommend that, in addition to the salary of the Secretary of State, there should be placed on the British estimates (*a*) the salaries and expenses (and ultimately pensions) of all officials engaged in the political and administrative work of the Office as distinct from agency work; (*b*) the expenses of any committees summoned to advise the Secretary of State; (*c*) a proportionate share of the cost of the maintenance of the India Office, the exact sums payable under heads (*a*) and (*c*) to be determined by agreement between the Secretary of State and the Lords Commissioners of the Treasury from time to time.

48. I desire to emphasise the fact that in my opinion the apportionment of cost should rest on a careful discrimination between political and administrative and agency work, a task not altogether easy, but one in which the parallel case of the division of functions and cost between the Colonial Office and the Crown Agents for the Colonies will afford guidance. Secondly, I regard it as of the highest importance that the Treasury should not adopt, at least in the case of salaries and expenses, the plan of granting a lump sum as a grant in aid of the expenses of the India Office, but should assert the same control over India Office salaries and expenses that it used to exercise over the salaries and expenses of other Government Offices. I may add that the question of the repayment to India of the whole or part of the very large sum expended in the construction of the India Office was brought to our notice, but that in my opinion the matter is not ripe for any decision at present. I would, however, offer a tentative suggestion that it might be possible in the future to effect a satisfactory settlement by a grant from the British Exchequer towards the cost of providing a fitting domicile in London for the High Commissioner for India.

Head IV.—The Mode of carrying out the Committee's Recommendations.

49. At an early stage in our investigations I—and I believe the majority of my colleagues—formed the clear opinion that it was desirable that the gradual relaxation of the powers of superintendence, direction, and control of Indian government vested in the Secretary of State by section 2 of the Government of India Act, should be carried out by constitutional conventions rather than by formal legislation, such alterations in the law alone being desirable which were intended to remove provisions which would prevent the growth of such constitutional conventions. This, of course, was the mode in which responsible government was secured by the Dominions, and after the most careful consideration of the matter I remain convinced that the only prudent course to adopt is to retain the supreme authority of the Secretary of State and to allow its exercise to be modified by constitutional practice.

50. In view, however, of the fact that the Bill to amend the Government of India Act as introduced into the House of Commons contains in clause 23 a general power enabling the Secretary of State in Council to regulate and restrict by rule the powers of superintendence, direction and control vested in the Secretary of State, the Secretary of State in Council, or the Governor-General in Council, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Act, such rules to be subject to annulment on an address from either House of Parliament, I deem it desirable to explain briefly the objections which appear to me to render such a form of procedure undesirable.

51. The framing of any such rules will present grave difficulties; a prudent Secretary of State will hesitate to part definitely with any power, knowing that to regain it in case of necessity he must enact another rule, which might be refused sanction by one or both Houses of Parliament. Moreover, disputes would always be possible as to whether a power of control had or had not been abandoned, and,

if the Secretary of State were given by the rules the sole power to determine the interpretation of the rules, the value of the rules might easily be called in question. Again, to take back a concession once made by rule would cause deep resentment in India, and would be a far more grave step than variation from time to time in the interpretation of a constitutional practice the essence of which permits a certain elasticity, admirably suited to the growth of so elaborate and artificial a creation as the Montagu-Chelmsford scheme for the government of India. Nor can I understand the precise relation of the clause, if it became law, to section 131 of the Government of India Act, which provides that "nothing in this Act shall derogate from any rights vested in His Majesty or any powers of the Secretary of State in Council, in relation to the Government of India," and that "nothing in this Act shall affect the power of Parliament to control the proceedings of the Governor-General in Council."

52. The difficulty, indeed, of dealing with these matters of high control by means of statutory rules seems to be excellently illustrated by the provisions in clause 1 (3) of the Bill, which adopts the use of rules for regulating the mode in which the Government of India is to exercise its supreme control over local governments in regard to transferred subjects. The purposes for which the powers of the Governor-General in Council are to be exercised are to be defined by rules, but it has been found necessary to add "but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified." Of the propriety and wisdom of this addition I have no doubt, but I suggest that its necessity casts grave doubt on the wisdom of the attempt to deal with this matter by statutory rules. I have no hesitation at all in suggesting for adoption as conventional rules of constitutional practice the recommendations made in this Report. If, however, they were to be enacted as statutory rules they would have to be hedged round with various restrictions which would render their enactment of no real value. Moreover, I am unable to see any answer to the argument which would become normal that, unless there were a statutory relaxation of authority, the old practice ought as a matter of right to be continued.

53. My own recommendations involving legislation are:—

(1) The suggestion regarding the mode of assent to reserved Bills and disallowance of Acts of the Indian and local legislatures and the disallowance of regulations and ordinances by His Majesty in Council (para. 13).

(2) The suggestion for subjecting to His Majesty's instructions the action of the Governor-General in his assent to, refusal of assent to, and reservation of Bills of the Indian and local legislatures (paras. 12, 26).

(3) The suggestion that the Indian Legislatures should be allowed to vary or repeal with the previous sanction of the Secretary of State the provisions of section 19 and parts VII. and VIII. of the Government of India Act (para. 26).

(4) The suggestion for the abolition of the Council, all the powers of the Secretary of State in Council being transferred to the Secretary of State. This will involve the disappearance of sections 3–13 of the Government of India Act, and consequential amendments throughout (para. 30).

(5) The suggestion as to giving freedom to the Secretary of State to regulate by executive order questions of correspondence by the repeal of the present statutory provisions (para. 40).

(6) The suggestion regarding the charges in connection with the India Office to be borne by the funds of the United Kingdom (para. 47).

Head V.—Matters cognate or relevant to the above.

54. After most careful consideration of the proposed appointment of a Select Committee of the House of Commons on Indian Affairs, I am satisfied that the creation of such a body is not in effect consistent with the conception of the functions of the Government of India and the Secretary of State explained in the preceding portion of this Report. A Committee which was accorded such powers, including that of expressing views on current questions of policy after an exami-

nation of the Secretary of State, as would result in membership of it becoming an objection of ambition, would develop such a taste for interference in Indian affairs that, whatever its immediate value, it would menace the progress of self-government in India, which can only, it must be remembered, be accomplished through the deliberate abstention from criticism or interference of both the Government of the United Kingdom and of Parliament. There are other objections to according such powers to a Committee, but they belong to a different sphere and need not here be dealt with. On the other hand, if less power than this is accorded to the Committee, it requires very little knowledge of the exacting duties connected with internal questions, imposed on members of Parliament by the political life of the day, to realise that the Committee would fail totally to fulfil the purpose for which it is destined—the creation of a better informed and more sustained interest in India.

55. Unfortunately, however, my opinion on this topic must be qualified by the knowledge that the majority of my colleagues desire that the Secretary of State should still be guided in large measure in the performance of his functions by the advice of a permanent Advisory Committee. If Parliament, acting on this advice, should see fit to impose on the Secretary of State the moral obligation of constant reference to a body mainly representative of the opinion of official circles in India, I cannot deny that the creation of a Parliamentary Committee with extended powers of intervention and criticism might serve as a useful corrective of the autocratic tendencies which reliance on official opinion might tend to generate. I am convinced, however, that the realisation of responsible government in India will be secured most rapidly and with least strain to the good relations between the peoples of the United Kingdom and India, if Parliament entrusts this grave question to the unfettered judgment of the Secretary of State for India, confiding to him the decision of the detailed manner in which he will secure the end which it has approved in principle.

56. Our attention has also been directed to the terms of clause 30 of the Bill to amend the Government of India Act, which regulates the mode of making the extremely important rules to carry out the many matters of the first magnitude which the new proposals leave to be enacted in this shape. The clause entrusts this high function to the Governor-General in Council with the sanction of the Secretary of State in Council, and provides for the annulment of the rules so made, or part thereof, on an address from either House of Parliament. I cannot consider that this procedure is constitutionally justifiable. I am clearly of opinion that the responsibility for making the rules must rest directly on His Majesty's Government, and that the rules should, therefore, be made by His Majesty in Council, acting, of course, on the recommendation of the Secretary of State who would, when necessary obtain the approval of the Cabinet for his proposals. I am also clearly of opinion that the provision for the annulment of rules so made on an address from either House of Parliament is contrary to principle and open to serious practical disadvantage. The making of the rules should be one of the important duties of the Secretary of State, who should follow a deliberate and consistent policy in regard to it, and it should not be possible for either House of Parliament unexpectedly from time to time to intervene.

57. I must also invite attention to two provisions in the Bill which appear to me, if passed as they stand, to affect the validity of the presupposition on which this Report is based, that in regard to transferred matters there will be a form of ministerial responsibility in the provinces. The result of clause 13 (3) of the Bill is to permit the Governor in Council or the Governor acting with a minister to invade spheres, from which they are intended to be excluded, with legal impunity, while a "consequential amendment" in Part II. of Schedule III. to section 106 of the Government of India Act confers upon a minister an immunity from the jurisdiction of any High Court in respect of his official actions, and of offences not being treason or felony, which is entirely subversive of the rule of law, itself the essential concomitant of responsible government. The explanation of the latter enactment is, of course, simple, as it is merely an extension to ministers of the immunity accorded to executive councillors under conditions now obsolescent, and the abolition of the exemption in the case of executive councillors would seem to be the step desirable, not the unparalleled step of exempting ministers from legal control. In the case of the head of the Executive Government of India, or the provinces, there are adequate reasons for an exemption which is enjoyed by the

Lord-Lieutenant of Ireland, though not by the Governors-General and Governors of the Dominions, but these considerations do not apply to officers of less importance. I regret also the insertion in clause 10 (1) of the Bill of the provision that certain Bills shall be reserved, without any statement as to the effect of this requirement, though presumably it means that the validity of a measure, open in substance to no objection, can be questioned because it should under this provision have been reserved and was not reserved. Nor is it obvious why by clause 8 (4) it should be proposed to perpetuate section 79 (4) of the Government of India Act when a much more satisfactory statement of the law is contained in the last paragraph of section 84 of that Act, which was added in 1916.

58. There is one further topic of great interest which I consider should not be overlooked in a complete survey of the field of our enquiry, the position of the Secretary of State, not as superintending, directing, and controlling the process of Indian Government, but as representing *vis-à-vis* the Government of the United Kingdom, and, in international matters, the people of India. His position in this aspect receives no recognition in the Government of India Act, and is necessarily a temporary arrangement. In due course India will be represented in London by a High Commissioner with wide authority, or a Minister Resident under the scheme devised for the Dominions by Mr. Asquith's Government in 1912, and communicated to the Dominion Governments in Mr. Harcourt's despatch of December 10, 1912.[1] In the meantime, however, the duties which a minister in London would perform under a responsible Government of India devolve rightly on the Secretary of State for India.

59. The recognition, however, of the international position of India which British diplomacy, resting on the efforts made by India during the war of liberation, has secured during the deliberations of the Peace Conference is based in ultimate analysis not merely on the personality of British India but also on the fact that it possesses a national will, which in due course will be expressed by the political organisation of the territory as a self-governing unit of the Empire. While, therefore, I entirely concur with the opinion that the views expressed in international matters by India must be determined by the Government of India, on which will devolve the necessity of securing the carrying out of the international obligations of India, I am of opinion that efforts should be made to bring the representatives of the people into as close touch with the Government as possible on this topic. Various methods of securing this result are conceivable, and I shall content myself with two suggestions, which are based on the assumption that under the League of Nations' covenant, as finally accepted, India will be entitled to be represented at meetings of the League by three delegates. In that case I suggest that the representation of India should normally consist of the Secretary of State (or some other British[2] minister if the Secretary of State cannot be spared for the duty) and of two members appointed by the Secretary of State on the recommendation of the Council of State and of the Legislative Assembly (the official members of that body abstaining from voting), the view of the British minister prevailing in case of disagreement among the delegates as to the method in which the vote was to be cast. Secondly, I suggest that any proposals which the Government of India desired to submit for consideration at a meeting of the League should, if found practicable, be submitted for discussion by the Indian Legislative Assembly and the Council of State presumably at, or about, the time when delegates were nominated. It would, of course, always be open for resolutions on the matter to be proposed independently by members in the Assembly or Council, subject to the usual rules affecting the bringing forward of resolutions.

60. A suggestion worthy of serious consideration as a means of securing the greatest possible measure of harmony and co-operation between the Government of India and the Secretary of State was made to us by our colleague, Mr. B. N. Basu, who indicated the desirability of taking advantage of the elasticity in the composition of the Executive Council of the Governor-General, contemplated in clause 21 of the bill, to secure the inclusion in its numbers of men appointed directly from the United Kingdom. There are obvious possibilities in the way of making such appointments from among men with experience, official or unofficial, in law, finance, or commerce in the United Kingdom in such manner as to secure closer touch between the policy

[1] "Imperial Unity and the Dominions," pp. 322–326.

[2] *I.e.*, a minister of the United Kingdom, whatever his race (*e.g.*, Lord Sinha).

of the Government of India and of the Government of the United Kingdom. But the matter has only indirect relevance to the questions referred to us, and I content myself, therefore, with an expression of sympathy for the suggestion of my colleague, whose position as a member of the Council of India and a representative of Indian political views renders his opinion on this topic of special value.

61. I should make it clear that the recommendations in this Report are based entirely on the foundation of the Montagu-Chelmsford Report, by which the Committee was to be guided, and from the principles of which I have not felt at liberty to depart, and that they ought to be judged solely as efforts to fill up in detail the outlines drawn in that document. I may add that military questions were not taken into consideration by us, and my recommendations therefore ignore entirely that aspect of Indian relations with the United Kingdom, fundamental as the importance of this question is in its own way.

62. In one respect I am glad to be in full agreement with my colleagues, in appreciation of the admirable manner in which the Secretary and the Assistant Secretary performed the important duties imposed upon them by the Committee.

(Signed) A. BERRIEDALE KEITH.

21st June 1919.

MEMORANDUM BY PROFESSOR KEITH, DATED THE 3RD APRIL 1919, ON HEAD I. OF THE TERMS OF REFERENCE.[1]

The members of the Committee have accepted the duty of advising the Secretary of State as to "what changes should be made in (*a*) the existing system of home administration of Indian affairs, and in (*b*) the relations between the Secretary of "State, or the Secretary of State in Council, and the Government of India, both "generally and with reference to relaxation of the Secretary of State's powers of "superintendence, direction, and control." This is the fundamental part of the functions of the Committee, and on the nature of the conclusions arrived at by the Committee upon it must largely depend the conclusions of the Committee on the specific questions mentioned in Head II. of the Terms of Reference. The form and mode of working of the Home administration of Indian affairs must be determined by reference to the functions of that administration; it is not possible to decide whether the powers of the Council should be made advisory only or how it should be constituted, unless and until it is known what duties it must perform. It is true that the burden laid on the Committee by asking it to advise on these fundamental questions is a heavy one, but it would be absurd to suggest that as constituted the Committee is incapable of dealing with them, and it is equally clear that it is the need of advice on these issues that justified the calling together of so strong a body.

To enable the Committee to form opinions on these topics it is eminently desirable that it should have the advantage of receiving the opinions of Mr. Montagu and Mr. Chamberlain, given, of course, informally and not recorded as evidence. But it is also desirable that the Committee should be informed of the views of such Members of the Council of India as may care to express views on these matters, and of ex-Governors such as Lord Carmichael. To evidence of this type should be added that of a representative of the Labour Party as already suggested, and two such representative constitutional authorities as Lord Bryce and Sir C. Ilbert might profitably be asked for their views.

The task of the Committee is facilitated by the fact that it is not compelled to consider the question *in vacuo*, in which case it would doubtless have been impossible for the members to accept the duty of advising. The Committee is entitled to assume that the scheme of reform adumbrated in the Report is to be adopted and that their duty is to supply material for completing the scheme. Examination of the Report shows that on the question of the relations between the Home administration and the Indian Governments it is, doubtless deliberately, vague, and that it leaves wide room for recommendations by the Committee. Moreover, in certain matters the Report expresses aspects of the problem without seeking to harmonise them. Thus it is suggested (p. 233) that when certain subjects have been transferred to Provincial Governments "the Secretary of State would cease to control the administration of the

[1] *See* paragraph 23 of this Report.

subjects which they covered." On the other hand it is expressly contemplated (pp. 179, 180) that the Governor in regard to transferred subjects shall not be at first in the position of a purely constitutional Governor, and that instructions for his guidance in his relations to his Ministers shall be laid down by the Secretary of State in Council. Similarly, even in non-reserved matters (p. 195) the Governor in Executive Council is to have a right in certain cases of intervention. As it cannot be contemplated that the Governor is to act without responsibility to the Secretary of State, it follows that the suggestion on p. 233 must be read as referring to normal procedure, and not as contemplating the complete abandonment of the Secretary of State's control. Similarly, when it is proposed (p. 234) that the Secretary of State "should divest himself of control of the Government of India in some specified matters," this proposal is clearly to be read subject to the fundamental rule (p. 157) that "the Government of India must remain wholly responsible to Parliament." It would appear, therefore, that in his relation to Parliament the Secretary of State remains under the reform scheme responsible for the government of India, subject to his right when any act done in India is called into question to ask Parliament to refrain from criticism, on the ground that the act in question was that of Indian Ministers responsible to an Indian electorate, with whose discretion it was impolitic to interfere.

The duty of the Committee under Head I. would therefore seem to lie in investigating the existing modes of control exercised over Indian Governments and Legislatures, and framing recommendations as to the retention or modification of such control. It may be convenient as a basis of discussion to consider one or two points in this regard in outline.

I.—Legislation.

(A) *Provincial.*—(*a*) At present it is incumbent on Provincial Governments to submit for the previous sanction of the Government of India and the Secretary of State all their projects for legislation before introduction (pp. 97, 98). So long as the Legislative Councils were merely in effect advisory bodies, the Government possessing an official majority, the necessity of this rule was obvious. But it would hardly be possible to find any precedent for the application of the rule to a representative legislature. It is open to argument that if Ministers are to have any real authority they must be allowed to submit, after consultation with the Governor, their own projects of law to the Legislative Councils, since otherwise they cannot develop responsibility.

(*b*) Again, provincial legislation is at present subject to the rule that it cannot alter legislation passed by the Indian Legislative Council save with the previous sanction of the Governor-General. Is it desirable that this restriction should be relaxed as inconsistent with the position of a representative legislature? Might it not be sufficient if early information on the proposed measures were given to the Government of India, as in the case of certain tax proposals dealt with at page 172 of the Report?

(*c*) At present provincial legislation is subject to the assent of the Governor, the Governor-General, and the Crown acting through the Secretary of State in Council. Is it necessary for the Secretary of State to retain the intervention of the Government of India, or should the stage of the submission to the Governor-General be cut out, leaving it, of course, open to the Government of India to submit any objections on the measure to the consideration of the Secretary of State? The Report (p. 206) contemplates that the Governor-General should in future be allowed to reserve a provincial Bill, and, if this were done, the position would of course be in effect the same as if reference to the Governor-General were cut out. If the stage in question were omitted, it would be necessary to give the Governor the power to reserve a Bill, and it may be possible that this power should be given in any case.

(*d*) Whatever relaxation of control may be possible as regards transferred subjects, the question arises to what extent similar relaxation is possible as regards reserved subjects. Should a distinction be made between such matters when submitted to the Legislative Council as a whole and when subjected to the Grand Committee procedure? In the former case might the measures be treated on the same footing as measures on transferred subjects, while in the latter case should the full control of the Government of India and the Secretary of State be retained? Should the Governor be instructed never to resort to Grand Committee procedure without the authority of the Secretary of State?

(*e*) On what principles should the Secretary of State exercise his power of disallowance whether directly or through the Governor? Is provincial legislation to be judged on its merits as they appear to the Secretary of State in Council or to the Governor? Or is the principle to be accepted that legislation passed by a clear majority of the elected members is to be allowed to stand unless it runs counter to some Imperial interest or is flatly immoral? The divergence between these two standpoints of criticism would often be fundamental.

(B) *Indian.*—In the case of Indian legislation, where the complications of transferred and reserved subjects does not arise, the chief question appears to be the extent to which the Government of India should be granted freedom of action in submitting measures for enactment to the Legislative Assembly. Measures to be carried by the Council of State would presumably first be submitted for the approval of the Secretary of State, but is it desirable to retain so much control in the case of measures to be approved by a representative legislature? Again, what criterion of approval should be applied to acts passed by the Legislative Assembly?

II.—Administration.

(*a*) As regards administration, the first question which presents itself is the nature of the relation to exist between the Governor and Ministers. Is he virtually to govern through them, or is he to be only a candid critic? The legal position which he will occupy will be so strong that he will be able, if he so desires, virtually to reduce the powers of Ministers to a minimum, and the actual nature of the new form of government must depend on the instructions given to the Governor. For instance he might be instructed to report every case in which he overruled Ministers, giving his reasons for action, so that he might receive the benefit of the advice of the Secretary of State, while in matters of great importance in which he differed from Ministers he might even be instructed to suspend action pending reference to the Secretary of State.

(*b*) As regards reserved matters and the executive authority of the Government of India, it may be asked what treatment is to be accorded to Resolutions of the representative legislatures calling for executive action. Should, in any case in which effect cannot be given to the Resolution, the Government concerned be required to report the Resolution to the Secretary of State with a statement of reasons for not acting upon it? And generally should it be a standing instruction to the official governments that in their action even within their own sphere they shall seek the closest possible co-operation with the representative legislatures?

III.—Finance.

(*a*) It is clear that in the past the necessity of close supervision by the Secretary of State has arisen from the absence of popular control in India. In view of the new arrangements contemplated for the provinces, would it be desirable to lay down that all proposals for expenditure must first be submitted to the Legislature; that, if approved by that body, they would normally be accepted by the Secretary of State; and that, in cases of disagreement as to the allotment for reserved subjects, reference should be made to the Secretary of State before the Governor exercises his power of insisting on an allotment?

(*b*) In the case of the Indian Budget, should it be a rule that in any case in which a Resolution of the Legislative Assembly on an item is objected to by the Government, the matter should be reported to the Secretary of State for his decision?

(*c*) In view of the existence of representative legislatures, should the classes of matters in which the sanction of the Secretary of State in Council is necessary be drastically revised so as to bring within this category none but proposals of great magnitude? If so, what limits can be suggested either in the case of appointments or of public works?

(Signed) A. Berriedale Keith.

3rd April 1919.

APPEN

LIST OF WITNESSES.

Sir L. Abrahams, K.C.B., Assistant Under Secretary of State for India.
Sahibzada Aftab Ahmed Khan, Member of the Council of India.
General Sir E. Barrow, G.C.B., G.C.S.I., Member of the Council of India.
Sir C. S. Bayley, G.C.I.E., K.C.S.I., I.S.O., Member of the Council of India.
The Right Hon. Austen Chamberlain, M.P., Chancellor of the Exchequer.
Sir Valentine Chirol.
Mr. G. H. Collier, C.I.E., Director-General of Stores, India Office.
Mr. H. E. A. Cotton, I.C.S.
Sir W. Duke, G.C.I.E., K.C.S.I., Member of the Council of India.
Sir M. Hammick, K.C.S.I., C.I.E., Member of the Council of India.
Sir A. Hirtzel, K.C.B., Assistant Under Secretary of State for India.
Sir T. W. Holderness, G.C.B., K.C.S.I., Permanent Under Secretary of State for India.
Sir C. P. Ilbert, G.C.B., K.C.S.I., C.I.E., Clerk of the House of Commons.
Mr. L. J. Kershaw, C.S.I., C.I.E., Secretary, Revenue and Statistics Department, India Office.
Mr. F. H. Lucas, C.B., C.V.O., Secretary, Financial Department, India Office.
Sir M. F. Reid, C.I.E., Member of the Council of India.
Mr. K. C. Roy.
Mr. N. M. Samarth.
Sir M. C. C. Seton, K.C.B., Acting Assistant Under Secretary of State for India.
Sir C. A. White, Member of the Council of India.

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