

**CONFIDENTIAL.**

**SIMLA RECORDS.**

1

**1913.**

**GOVERNMENT OF INDIA.  
HOME DEPARTMENT.**

**POLITICAL—A.**

**Proceedings, October 1913, nos 12-30.**

**Principles which should govern either the conferment of honours on, or the promotion of, officers against whom civil or criminal proceedings have been instituted during the pendency of such proceedings.**

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# NOTES

POLITICAL A.—OCTOBER 1913.

Nos. 12-30.

PRINCIPLES WHICH SHOULD GOVERN EITHER THE CONFERMENT OF HONOURS ON, OR THE PROMOTION OF, OFFICERS AGAINST WHOM CIVIL OR CRIMINAL PROCEEDINGS HAVE BEEN INSTITUTED DURING THE PENDENCY OF SUCH PROCEEDINGS.

(EXTRACT FROM THE NOTES ON THE FILE REGARDING THE MEMORIALS FROM MR. WESTON AND THE TWO POLICE OFFICERS CONCERNED IN THE MIDNAPUR CIVIL SUITS REGARDING THE WITHHOLDING OF THEIR PROMOTION TILL THE APPEALS WERE DECIDED.)

LETTER FROM THE GOVERNMENT OF BENGAL, NO. 1604-P., DATED THE 8TH FEBRUARY 1912.

*1 P. No. 12*

*1st. J. Sept.  
1912 Nos. 1-5.*

*1st. N. March  
1912 Nos. 34-46*

2. Arising out of this special case the Government of India issued on 12th August 1911 a demi-official circular letter to all local Governments prohibiting generally the promotion or decoration of any officer as regards whose conduct enquiries or proceedings, whether executive or judicial, were under contemplation or had been instituted. This appears to have been originally a Home Department order, but, His Excellency apparently saw the letter after issue, and it is foreshadowed in his telegram to Secretary of State, no. 208, dated 9th August 1911. It will be observed that the instructions are couched in very wide terms.

*Encl. to Report  
August 1911, No. 12*

3. We have now three sets of protests to consider—

(c) Representation by the Bengal Government in their letter no. 1604-P., dated 8th February 1912, against the demi-official orders, dated 12th August 1911.

I will take each of these in turn.

6. There is left the Bengal protest. We may at once perhaps concede the request that our orders should be made official. On the merits also we may perhaps make some concession to the strong service feeling, which undoubtedly exists on the subject. As to what this should be it would probably be wisest to consult local Governments demi-officially in the first instance, in continuation of our previous demi-official letter. But it certainly suggests itself that the word "conduct" does need to be defined, and that it should be laid down more clearly what sort of proceedings are contemplated. The Bengal remarks on this point are not so fanciful as they would seem. The device of putting up men of straw to bring civil cases is spreading, and we have under consideration a misuse of the Small Cause Courts for this purpose. In a case, moreover, like that of Mr. Naidu, which is now before us, an undoubted hardship will be caused by delaying his grade promotion. It is also for discussion whether grade promotion, which is arranged as an accounts matter without Government's intervention, is promotion for the purposes of the orders. Mr. Weston's case is not really relevant as to this. The circumstances of the notification about him were special. Finally it is for orders whether our instructions should not be so worded as to make it clear that each Government retains a free hand with regard to its officers to reward or punish them after making its own enquiry. In a word should we not put it to local Governments that they would be expected to consider the necessity of keeping the reputations of their officers above suspicion in giving promotions, or proposing honours, and then leave it to their discretion, and not fetter them with absolute orders which will often cause injustice.

M. S. D. BUTLER,—4-3-12.

C224HD

In this file \* \* \* \* \* one general issue is raised separately by the Government of Bengal. It will be most convenient to discuss the general case first.

2. This has its origin in the Midnapur case. Certain honours were conferred upon two of the Police officers concerned in that case while it was pending. It terminated before Mr. Justice Fletcher on the 7th August 1911.

On the 8th August 1911 the Secretary of State had wired, saying that a debate on the Midnapur case was pending, and that he "would in particular like to announce the orders had been issued \* \* \* that in future in cases where enquiries or proceedings are pending all proposals for promotion or conferment of honorary titles will be held in abeyance." On the 9th idem a reply was sent that such orders had issued. These general orders are contained in a demi-official letter of the 12th August, asking that "all proposals regarding the promotion of, or the conferment of honours upon, officers of Government should be held in abeyance in cases where enquiries or proceedings, whether executive or judicial, as regards the conduct of such officers are under contemplation or have been instituted, until such enquiries or proceedings have been completed." It was added that this was presumably in general the existing practice, but that it should be regarded as "a definite rule throughout India". The application of these orders to the particular case in Bengal which originated them was conveyed in a telegram of the 9th August 1911, ordering the cancellation of the promotion of Mr. Weston to the 2nd grade of Collectors, and of Inspector Lal Mohan Guha to a Deputy Superintendentship. Meanwhile on the 11th August the Secretary of State wired that Parliamentary criticism was being directed to the fact that after the judgment the appellants were exercising active functions on behalf of Government, and in a demi-official letter of the 13th August 1911 it was ordered that none of these three officers should be employed on ordinary administrative duties with these serious charges hanging over their heads. The Secretary of State was informed of this on the 14th. The only other general order is contained in Mr. Montague's letter to the *Times*, dated the 23rd September 1911, in which the following passage occurs :—

"Meanwhile the men will not be employed in administrative office and the promotions gazetted immediately after the hearing of the civil case—promotions which would, in ordinary circumstances, have been matters of normal routine—have been cancelled. These are suspensory steps, in no way final or condemnatory, but wise, as I think you will agree, pending the hearing in the Court of Appeal. I may add that in future all proposals for promotion or bestowal of honorary titles are to be held in abeyance in cases where inquiry or legal proceedings are pending."

3. The Bengal letter is with reference to Sir A. Earle's demi-official of the 12th August 1911, which deals with promotions and honours, but the question of the conferment of honours is not the subject of the protest, which urges various considerations in respect of promotion only. As regards this the following points are taken :—

- (a) Stoppage of promotion is punishment even if promotion is given retrospectively where an officer has cleared himself. If it is the real intention of Government to give such retrospective promotion, it is asked that this may be stated specifically. *With* retrospective effect *or without*, it is difficult to see how the stoppage of promotion can be anything but punishment, it being understood that promotion to which the Government of Bengal refer, is promotion which "is ordinarily granted by seniority" (paragraph 3 of letter); in other words, promotion which would not ordinarily be withheld except for incompetence or worse.
- (b) Punishment should only be awarded after departmental enquiry, as is the custom at present. It need only be said that this is a principle which is jealously insisted upon even in the case of the most lowly-paid Government servants.
- (c) The practice of the Province where a charge is brought against an officer is to hold a departmental enquiry and to be guided by the merits in taking action in respect of promotion. In other words, action might be taken in accordance with the wishes of the Government of India, but it would be decided upon in the light of each particular case. This too is scarcely open to dispute.
- (d) That considerable discontent exists in the Province at present, which will be intensified if the grievance is added of a departure from these principles, which, in the opinion of the local Government, would constitute a legitimate grievance. If I may say so from my knowledge of Bengal, it is the case that extreme discontent exists.
- (e) That in any case the orders cannot be defended as applicable to civil suits. A criminal case is some presumption of moral delinquency; ordinarily, it is disposed of quickly. A civil suit may not necessarily indicate any moral fault, and in this country the proceedings may be protracted to an extraordinary extent. The

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local Government emphasises the facility with which false cases can be met and the extremely dangerous weapon thus placed in the hands of unscrupulous persons.

(f) Exception is taken to the vagueness of the phrase "enquiries or proceedings \* \* \* as regards the conduct of officers," and it is asked whether official or private conduct, or both, is contemplated.

(g) It is pointed out that Mr. Montague's letter only contemplated action where enquiries or legal proceedings were *pending*. The orders of the Government of India refer to the case in which enquiries *are under contemplation* or have been instituted. It is asked whether this extension is intentional.

(h) It is represented that orders of this important character should issue in official form.

4. In the absence of discussions on record as to the form taken by the orders of the 12th August, it is not known how far these points were intentionally set aside or not, but I would venture respectfully to represent that they are weighty points, and that the continuance of the orders in their present form will occasion great dissatisfaction and will carry the possibility of great hardship. It is submitted that retrospective redress will never afford a remedy, and unless each case is judged on its merits, and is known to have been judged on its merits, it is difficult to arrive at a decision which will be regarded as satisfactory, at any rate by the officers concerned. The orders of last year are general in form; in some cases they may be amply justifiable, in others they may not, and if they do contain the possibility of injustice it is expedient that they should be modified. The fact that they have hitherto only issued in demi-official form will facilitate this, but in view of Mr. Montague's letter no action can of course be taken without the cognisance of the India Office. The difficulty arises from the impossibility of passing any precise orders of general application to cases of vastly different kinds. The fact that the existence of a charge against an officer affords an absolutely necessary reason for considering its bearing upon any proposal to promote him, is beyond doubt, but the ground is less certain beyond this point. After this stage, action must be upon the merits, and as the merits may vary the course to be taken cannot rightly be identical in all cases. If this is accepted, it would perhaps suffice if the point were emphasised, special enquiry with a view to its consideration insisted upon, and the decision left to those locally responsible with a warning as to the discredit likely to attach to the administration, if officers are promoted lightly against whom serious charges justifying the withholding of promotion may thereafter be established. The matter of retrospective redress might also be mentioned.

\* \* \* \* \*

H. WHEELER,—6-3-12.

This is a very important matter; for, \* \* \* it is, I consider, absolutely necessary that the orders contained in the demi-official letters should take an official form, and before they take an official form that the principles which the demi-official orders lay down should be fully reviewed and considered.

\* \* \* \* \*

I do not know how far the demi-official letter was communicated to officers of other Governments, but in my own case I noted it for guidance if circumstances should arise.

The deprivation of Mr. Weston of grade promotion is a *substantial punishment* inflicted on an officer who was cleared by our own departmental enquiry and whom even Mr. Justice Fletcher has acquitted of evil motives.

The case would have been quite different if Mr. Weston had been selected for a Commissionership, or any high appointment immediately after judgment had been delivered. But his deprivation of grade promotion, due in the ordinary course of seniority, involving no reward, no selection and no special merit, is to him a punishment which is only inflicted on proof of gross misconduct. No rules such as that contained in the demi-official letter could be converted into official orders without most careful qualification, and a careful review of the various kinds of cases which may arise.

For example, cases in which legal proceedings have their origin with the volition or sanction of Government are on an entirely different basis from legal proceedings initiated by private persons.

The former are more akin to a departmental enquiry, or a trial by commission, and the Government would decide whether it should place the officer under suspension or not; but if it elected not to suspend an officer, it could not in good conscience refuse him this routine grade promotion which is merely an accounts matter. If it suspended him, obviously no question of promotion of any kind could arise; if it did not suspend him, but had ordered or countenanced the promotion, it would of course be stultifying itself if it simultaneously gave him any promotion which it was not bound to give him, or which implied any selection or reward.

*prosecution*

*Ed. A. Sept. 11, 1911, Nos. 1-5*

*Exalt. Dep. August 1911, No.*



When, however, the litigation against the officer, whether criminal or civil, has been instituted privately either by the officer himself to clear his character, or by a private person, the Government should have absolutely a free hand. Where the prosecution was a criminal one and the officer was convicted, in most cases suspension pending appeal would be the most obvious and proper course. If, however, the offence involved no moral turpitude or was only technical, the Government should have freedom of action as to whether to hold that the punishment inflicted by the Court was sufficient, or to decide that the circumstances warranted further departmental punishment.

When the litigation is civil, each case must be judged entirely on its merits, and it should be open to the Government to decide on the conclusion of the litigation whether the conduct of the officer reflected on him in his public capacity, or in his private capacity, and whether it was the duty of the Government to proceed to departmental action against him, the preliminary to which would be to call upon the officer to explain the circumstances which the Court had found against him.

No single rule can possibly apply to so many widely differing cases, and to introduce any hard and fast rule which should put an officer at the mercy of unscrupulous, cunning, political machination, or private spite would paralyse the Government of the country.

To remove independence of action does not imply of necessity defiance of the authority of a civil court. The court has to decide between plaintiff and defendant; a civil court may disbelieve a particular witness, but that does not prove that the witness has committed perjury. It is open to the Government to agree with the court, or to disagree with it, or to keep an open mind and have its own independent enquiry. In no case can it act on its belief without giving the officer whose veracity is impugned an opportunity of rebutting the court's inference. A criminal court will not convict upon a civil court's finding, why should the Government? A civil court may give a decree when a criminal court would return a verdict of non-proven, and the rules about the burden of proof, and the benefits of doubts are not regulated in the same way. If the rule of the demi-official had been applied to Mr. Clark's case, Mr. Clark would ere now have been under disabilities.

I think that I have written enough to show that the case is one of much importance, requiring the most careful consideration and representation to the Secretary of State, before the demi-official letter despatched in most urgent circumstances should be translated into official orders which must fetter the Government in hundreds of possible cases in which freedom of action to meet varying circumstances is an absolute essential to the protection of officers in the cause of good administration.

R. H. C[BADDOCK],—9-3-12.

#### *Summary.*

The case deals with—

- (a) the merits of the demi-official orders of the 12th August 1911, which were to the effect that all proposals regarding the promotion of, or the conferment of honours\* upon, officers of Government
- \* The question of honours is not now in issue. should be held in abeyance in cases where enquiries or proceedings, whether executive or judicial, as regards the conduct of such officers are under contemplation, or have been instituted, until such enquiries or proceedings have been completed;

\* \* \* \* \*

The details are stated in the note of the 6th instant \* \* \* \*

3. As regards the general case the Hon'ble Member in the Home Department is of opinion that the orders should take official form, and that the principles upon which they should be based should be fully reviewed and considered. In his note, dated the 9th instant, the principles which he would adopt are outlined.

4. It is suggested that the case might be circulated.

H. WHEELER,—9-3-12.

His Excellency would like this circulated.

J. H. DuBOULAY,—14-3-12.

\* \* \* \* \*

Similarly I am averse to any action being taken at present in regard to the recent orders. This case has attracted "angry interest," as one of the papers described it, in the House of Commons, and I cannot conceive anything more likely to be prejudicial to the interests of those

concerned than the re-opening of the general question before the case has been *finally* adjudicated upon.

G. F. W[ILSON],—15-3-12.

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As regards the general case, the demi-official orders seem to me to be far too widely framed, and I agree with the Home Member that more suitable orders in official form are required. The demi-official orders have caused, at all events in Bengal, very bitter feeling. Recruiting for the Indian Civil Service is already unsatisfactory, and it will get worse if nothing is done to re-assure men who may now be thinking of entering the Service. It is also important to re-assure men now actually in the country. The case is so strong that we ought to move in the matter at once.

R. W. C[ARLYLE],—16-3-12.

We make half our own troubles in this country by issuing general orders, instead of dealing with cases as they arise. The arguments in the Bengal letter seem to me convincing. Cannot we withdraw the demi-official letter and leave it to local Governments to decide cases as they arise laying down that they should be careful to avoid any thing that would look like challenge to a judicial court? We should have to tell the Secretary of State first.

The case should certainly not, in my opinion, be left in a demi-official stage. The letter does not seem to have convulsed other provinces \* \* \* \* \*. But the conditions in Bengal are peculiar, and I think it is in the public interest to clear up the position. If, therefore, we cannot re-call the demi-official letter we ought, I think, to go into the case officially and consult local Governments in the first instance.

\* \* \* \* \*

Whatever we may think of the merits of the case, however anxious to defend our officers, we must remember that the Government of India is a high and supreme body responsible for British justice no less than for British administration, and that we ought to do and say nothing to anticipate the judgment of the courts.

S. H. B[UTLER],—17-3-12.

\* \* \* \* \*

I agree with the Hon'ble Home Member in the view that the principles on which a general official order may be based should be carefully considered. This too, I think, might be allowed to stand over till the appeals are heard and decided. Any action taken at present may be misunderstood by the public in Bengal.

S. A. I[MAM],—18-3-12.

\* \* \* \* \*

On the general question I agree with the Home Department that the demi-official orders are in effect too comprehensive, and that their modification should be taken up.

\* \* \* \* \*

W. H. C[LARK],—18-3-12.

I agree with the Hon'ble Sir Harcourt Butler. I do not know the rules of the Civil Service, but in the British Army an officer whose conduct was under question would, should he be entitled to it, have his promotion stopped and be placed under arrest pending enquiry. If acquitted, he would receive his promotion with an antedate from the time he would have been promoted, had no allegation been made against him. This action would not be looked upon as a punishment. I make this remark with reference to paragraph 3 (a), page 3 of notes.

O'M. C[REAGH],—19-3-12.

As Sir R. Craddock is away, and as there is no special urgency in this case, it may stand over for Council at Simla.

H[ARDINGE],—20-3-12.

\* \* \* \* \*

Orders are solicited as to when His Excellency would wish this case brought up in Council. \* \* \* \*

M. S. D. BUTLER,—1-5-12.

Bring up in Council on May 10th.

H[ARDINGE],—6-5-12.

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*Order in Council.*

The consideration of the \* \* \* general question of the merits of the demi-official orders of the 12th August 1911 be postponed. .

H[ARDINGE],—10-5-12.

NATIONAL ARCHIVES OF INDIA



There were three different questions dealt with in this file :—

\* \* \* \* \*

*Third.*—The general question regarding the promotion, etc., of officers when their conduct is under enquiry either in executive or judicial proceedings.

This has yet to be settled. It was held over for further consideration by the Order in Council, dated the 10th May 1912. It is now proposed, with Secretary's approval, to extract

the notes from the file relating to this particular point and to submit them for consideration as a separate file. Meanwhile the amalgamated case will be recorded.

A. L.,—3-9-12.

Please do as proposed.

H. WHEELER,—4-9-12.

The notes have been extracted as decided above, and the case is submitted for orders.

A. L.,—13-9-12.

LETTER FROM THE AGENT TO THE GOVERNOR-GENERAL IN RAJPUTANA, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, FOREIGN DEPARTMENT, NO. 3524, DATED THE 23RD SEPTEMBER 1912.

*Pro. No. 13.*

*Estab. Secy.  
August-1911,  
No. 12.*

Hon'ble Member verbally asked me to endeavour to draft a reference in this troublesome case. The tenour of the previous noting was that the existing demi-official orders should be replaced by official instructions, to be framed in consultation with local Governments and with the approval of the Secretary of State. A draft is submitted. It only deals with the action to be taken while cases are *pending*; once they are disposed of it is for Government to decide upon the merits in each instance what more is required. The general line suggested is as follows :—

- (1) An absolute prohibition against the conferment of honours upon officers whose conduct has been questioned in the Courts.
- (2) A direction that promotion by selection should rarely be given in such cases.
- (3) An instruction that pending the disposal of criminal proceedings (usually of short duration) all promotion might be held in abeyance to be rectified thereafter by retrospective effect if the officer concerned clears himself.
- (4) In the case of prosecutions or suits initiated by Government, the matter of ordinary grade promotion to be governed by the decision come to whether it is necessary to suspend the officer involved or not; if he is not suspended grade promotion might be given.
- (5) With regard to civil litigation of a private origin, Government to be guided by the merits, and no hard and fast rule to be laid down, but a deliberate decision must be arrived at and the matter must not be treated as routine.
- (6) Generally, any action to be avoided which will bear the appearance of flouting the courts or bringing the administration of justice into disrepute.

No doubt when we receive the opinions of local Governments other points will suggest themselves. His Excellency should see with the suggestion that the papers should be circulated before the reference goes out.

H. WHEELER,—14-10-12.

The draft prepared by Secretary seems a fair basis for a reference to local Governments, and on the receipt of their replies we shall be able to make any changes. As long as we distinguish the non-bestowal of a reward from the infliction of a punishment we shall be on firm ground. The main desideratum is to leave plenty of room for individual decision upon the merits with regard to principles, and not to apply to every case any hard and fast rule.

R. H. C[RADDOCK],—17-10-12.

#### *Summary.*

The Order in Council of the 10th May 1912 will recall this case.

Now that the Midnapore appeal has been decided the Home Department proposes a reference to local Governments with the view of formulating official orders ultimately, for the approval of the Secretary of State, governing the conferment of honours upon, and the promotion of officers against whom proceedings are pending in the courts (either civil or criminal) during the pendency of such cases. The general tenour of the previous notes of Hon'ble Members was that any orders on the point should be official, and framed in consultation with the Provincial Governments. It was also recognised that any action taken must be with the approval of the Secretary of State.

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A draft reference has been prepared which is submitted for His Excellency's approval. As the case was previously taken in Council, it is suggested that the papers should be circulated.

H. WHEELER,—21-10-12.

Private Secretary to His Excellency the Viceroy.

His Excellency would like this to be circulated.

J. H. DuBOULAY,—26-10-12.

Private Secretary to the Viceroy.

I should prefer a short resolution ordering that promotions and honours are to be held up *pendente lite*, and I see no necessity for consulting Provincial Governments.

I think the Government of India should simply issue such an order.

G. F. W[ILSON],—6-11-12.

I am just leaving on tour and have no time to read up this case again. But I am inclined to agree with the Hon'ble the Finance Member, from my recollection of it when it last came up, that there is no necessity for consulting local Governments.

W. H. C[LARK],—7-11-12.

I agree with the Hon'ble the Finance Member. Holding up promotion and honours *pendente lite* can be no hardship as they can be subsequent to the termination of proceedings made good if the officer in question clears himself. No reference to local Governments seems to be necessary.

S. A. I[MAM],—9-11-12.

I do not quite understand what my Colleagues Sir Guy Fleetwood Wilson, Mr. Clark and Mr. Ali Imam propose, but if the proposal is that whenever any case of any description, whether probable or not, is brought against a Government officer he is not to receive promotion or honours till the case is disposed of, I cannot agree. Retrospective promotion is not the same thing as promotion at the time when it is due; and to delay promotion is in itself a penalty sometimes an unavoidable penalty; but in some cases even retrospective effect cannot be given. Take, for instance, the case of a Collector selected for appointment as Secretary to Government. A case is brought against him of an utterly trivial kind, whether true or false. How can he be compensated if his selection as Secretary is cancelled? It may make it impossible to put him in as Secretary after the case has been disposed of. The Collector will be lucky if his case is disposed of in a year, and it is frequently impossible to make a merely acting appointment for such a long period in a Secretariat. Moreover, once such an order as is now proposed (if I understand my Colleagues aright) is passed, it will very soon become known; and I have no doubt in Bengal great play would be made with it. It would be possible for a small clique to stop an officer's promotion for years by successively having cases brought against him.

The Junior civilians in Bengal and Bihar who are most likely to be seriously affected by such orders feel very bitterly on the subject as they do not believe they will be protected by the civil courts in Bengal or Bihar, and recent cases have shown that their fears are not without foundation.

It appears to me essential that we should know what local Governments have to say on the subject. The present demi-official orders go much too far, and we must protect our men.

R. W. C[ARLYLE],—27-11-12.

I should much prefer to limit the orders to drawing attention of local Governments to the absolute necessity of avoiding the scandal of apparent opposition to high Judicial Courts. The more I think of it the more convinced I am that no general rules can be laid down. Local Governments should be given discretion in my opinion and held responsible. I agree with the Hon'ble Sir Reginald Craddock that we must protect our officers, European and Indian, and that a general rule such as that proposed by my Hon'ble Colleague the Finance Member might cause very serious hardship. I would, however, be quite prepared to indicate it as a procedure which would ordinarily be suitable. I don't see any need to consult local Governments.

S. H. B[UTLER],—9-12-12.

I agree with the Hon'ble Sir Harcourt Butler.

O'M. C[REAGH],—13-12-12.

I have no wish to press for a reference to local Governments, provided that it is agreed that the orders issued in the demi-official circular letter are withdrawn in favour of something less explicit.

If those orders had been carried out (which they probably have not) Mr. Andrew's promotion in the *Burma Critic* case would have been stopped. As I said before, the distinction

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between special reward and special punishment is very great. But they have this in common that they should better await the decision of a case in which the conduct of an officer is involved. The denial of *ordinary* promotion is a special punishment; the award of an honour is a special reward.

There are standing orders about suspensions pending enquiry which are exercised by local Governments, and local Governments can be trusted to suspend officers against whom there appears to be a strong *prima facie* case of grave misconduct. At the same time I agree with the Hon'ble Sir Harcourt Butler that the importance of not passing any order which has the appearance of flouting a judicial decision might be impressed upon local Governments.

I suggested a prior reference to local Governments, because some Hon'ble Members seemed averse from any modification of the orders; but I shall be satisfied with the lines suggested by Sir Harcourt Butler, local Governments having full discretion on the following principles:—

- (1) In all cases where an officer's conduct has been called in question to hold over recommendations for honours.
- (2) Where cases have actually been instituted to suspend "*pendente lite*" special rewards and punishments, stoppage of ordinary promotion being classed as a punishment, and its enjoyment not regarded as a reward.
- (3) When a judicial decision has been passed adverse to the officer, to decide on the merits of each case whether, after hearing what the officer has to say, any departmental punishment is required.

These being indicated as the general principles applicable to ordinary cases, it might be pointed out that exceptional cases might be dealt with otherwise, provided that any appearance of flouting judicial decisions should be studiously avoided.

R. H. C[RAVDOCK],—22-12-12.

As the matter is not of pressing urgency, His Excellency would perhaps desire that it should be taken in Council when he is able to preside.

H. WHEELER,—27-12-12.

Yes.

J. H. DuBOULAY,—1-1-13.

Private Secretary to the Viceroy.

Question and answer in Parliament, no. 94, dated the 21st October 1912.

LETTER FROM THE GOVERNMENT OF BURMA, NO. 958-T—3-M-30, DATED THE 21ST OCTOBER 1912.

LETTER FROM THE CHIEF COMMISSIONER OF ASSAM, NO. 3018-A., DATED THE 31ST OCTOBER 1912.

LETTER FROM THE CHIEF COMMISSIONER OF ASSAM, NO. 3124-A., DATED THE 11TH NOVEMBER 1912.

Question and answer in Parliament, dated the 5th December 1912.

Submitted for information.

The Under Secretary of State for India says that the rule was initiated by the Government of India. So far as our papers show, the Secretary of State seems to have started the matter, vide his private telegram to His Excellency, dated the 8th August 1911, and Secretary's note on page 3 of the collection, "Poll. A., September 1912, nos. 1-5. The Secretary of State's telegram to His Excellency was *private* and, therefore, perhaps the Under Secretary of State does not seem to have referred to it in his answer. We need not perhaps say anything to the India Office about it.

A. L.,—28-12-12.

C. W. E. COTTON,—1-1-13.

OFFICE MEMORANDUM FROM THE PRIVATE SECRETARY TO THE VICEROY, NO. 1613, DATED THE 20TH DECEMBER 1912.

LETTER FROM THE DIRECTOR-GENERAL OF POSTS AND TELEGRAPHS, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, COMMERCE AND INDUSTRY DEPARTMENT, NO. 111-CONFIDENTIAL, DATED THE 17TH DECEMBER 1912.

Memorial LETTER FROM C. A. BELL, ESQ., POLITICAL OFFICER, SIKKIM, TO THE SECRETARY TO THE GOVERNMENT OF INDIA, FOREIGN DEPARTMENT, DATED THE 28TH DECEMBER 1912.

LETTER FROM THE GOVERNMENT OF BIHAR AND ORISSA, NO. 6334-A., DATED THE 31ST DECEMBER 1912.

G. M. Press, Simla,—No. S. 410 H. D.—16-1-13,—40,—M.D.

11

LETTER FROM THE GOVERNMENT OF BENGAL, NO. 489-A., DATED THE 17TH JANUARY 1913. *1/10. 907*

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LETTER FROM THE GOVERNMENT OF BENGAL, NO. 1426-A., DATED THE 22ND FEBRUARY 1913, " "

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Submitted for orders as to when this is to be brought before Council,

C. C. S.,—27-2-13.

On two cases of a non-urgent character, His Excellency has desired that they should be taken up in Simla, and I think we may assume that this should be similarly treated.

Re-submit when His Excellency arrives in Simla.

H. WHEELER,—4-3-13,

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LETTER FROM THE GOVERNMENT OF BIHAR AND ORISSA, NO. 1719-A., DATED THE 10TH MARCH 1913, *1/10. 910. 24.*

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LETTER FROM THE GOVERNMENT OF BENGAL, NO. 3298-A., DATED THE 15TH APRIL 1913. *1/20. No. 25*

His Excellency has now arrived and the case is submitted as directed on page 10 of the notes.

A. L.,—16-4-13.

C. W. E. COTTON,—17-4-13.

Submitted for His Excellency's orders as to when this should be taken in Council (notes, page 9).

W. S. MARRIS,—17-4-13.

Private Secretary to the Governor-General.

Please bring up to Council on May 2nd.

H[ARDINGE],—18-4-13.

NATIONAL ARCHIVES OF INDIA

*Order in Council.*

That the demi-official orders be withdrawn and the matter reported to the Secretary of State and that local Governments be instructed on the lines indicated in the Hon'ble Sir Harcourt Butler's note of March 17th, 1912.

H[ARDINGE],—2-5-13.

Hon'ble Member will remember that the demi-official orders now withdrawn were issued at the private suggestion of the Secretary of State (or Mr. Montagu) and that Mr. Montagu repeated their purport in a letter to the *Times*. The orders were issued without any consultation or deliberation and they have brought on the Government of India a volume of criticism. In such a matter the Secretary of State would usually be guided largely by the considered opinion of the Government of India but in this instance public opinion was apparently alert at home and the Secretary of State was disposed to take matters into his own hands.

2. The Order in Council directs that the orders be withdrawn and the matter reported to the Secretary of State. I venture to think this is the correct course to take. But I draw attention to the fact that we may possibly incur some criticism or censure. I do not think that need be regarded; for two reasons. (1) We are in a far stronger position to maintain the orders that we think just if they are issued and the Secretary of State is confronted with the *fait accompli* than if we have to reason it out with him beforehand. (2) He has, rather untruthfully, in a reply given in Parliament, thrown the odium of the orders upon the Government of India. Therefore he cannot object to our assuming the responsibility for reconsidering them.

3. The drafts are for approval.

W. S. MARRIS,—17-5-13.

R. H. C[RADDOCK],—19-5-13.

C75HD

12—16

D.-O. no. 210/20 (Political).

HOME DEPARTMENT.

My dear Mr. Cardew  
Mr. Carmichael  
Mr. Cumming  
Burn  
Barron

Mr. Rice  
Mr. Le Mesurier  
Sir Benjamin Robertson  
Sir Archdale Earle  
Sir G. Roos-Keppel  
Sir Hugh Daly

Simla, the 30<sup>th</sup> May 1913.

I am desired by the Governor-General in Council to request that the orders contained in Sir A. Earle's demi-official letter no. 1245/246-(Estabts.), dated the 12th August 1911, may be considered as, withdrawn. to, etc.

2. An official letter is being addressed to the Government of Madras etc. separately on the subject of the conferment of honours or promotion on officers against whom criminal or civil proceedings have been instituted, during the pendency of such proceedings.

Yours Sincerely  
 (Sd.) W. S. Harris

To

- The Hon'ble Mr. A. G. Cardew, C.S.I., Chief Secretary to the Government of Madras.
- The Hon'ble Mr. G. Carmichael, C.S.I., Chief Secretary to the Government of Bombay.
- The Hon'ble Mr. J. G. Cumming, C.I.E., Chief Secretary to the Government of Bengal.
- The Hon'ble Mr. R. Burn, Chief Secretary to the Government of the United Provinces.
- The Hon'ble Mr. C. A. Barron, C.I.E., Chief Secretary to the Government of the Punjab.
- The Hon'ble Mr. W. F. Rice, C.S.I., Chief Secretary to the Government of Burma.
- The Hon'ble Mr. H. LeMesurier, C.S.I., C.I.E., Chief Secretary to the Government of Bihar and Orissa.
- The Hon'ble Sir Benjamin Robertson, K.C.S.I., Chief Commissioner, Central Provinces.
- The Hon'ble Sir Archdale Earle, K.C.I.E., Chief Commissioner, Assam.
- The Hon'ble Lieutenant-Colonel Sir G. Roos-Keppel, K.C.I.E., Chief Commissioner, North-West Frontier Province.
- The Hon'ble Lieutenant-Colonel Sir Hugh Daly, K.C.I.E., C.S.I., Chief Commissioner of Coorg.

C43HD



14

My dear Porter  
 Dear Vincent  
 Dear Sir Henry McMahon  
 My dear Kerr  
 Dear Brunning  
 Dear Sir Archibald Wynne  
 My dear Russell  
 Dear Brunyate

D.O. no.221-23(Political).

My dear Michael HOME DEPARTMENT.  
 Dear General Baines Simla, the 30<sup>th</sup> May 1913.

In continuation of Sir Archdale Earle's demi-official letter no. <sup>1325</sup>~~1328~~ (Estabts.),  
 dated the 18th August 1911, I am desired to forward for information, a copy of  
 the enclosed demi-official letter addressed to local Governments and Administra-  
 tions, on the subject of the conferment of honours or promotion on officers against  
 whom criminal or civil proceedings have been instituted, during the pendency of  
 such proceedings.

2. A copy of the official letter referred to will be communicated in due course  
 to the <sup>Education</sup>~~etc., etc.~~ Department.

*Yours, sincerely*  
*(Sd) W S Harris*

To

- The Hon'ble Mr. L. C. Porter, C.I.E., Secretary to the Government of India, Education Department.
- The Hon'ble Sir W. H. Vincent, Kt., Secretary to the Government of India, Legislative Department.
- The Hon'ble Lieutenant-Colonel Sir A. H. McMahon, G.C.V.O., K.C.I.E., C.S.I., Secretary to the Government of India in the Foreign Department.
- The Hon'ble Mr. J. H. Kerr, C.I.E., Secretary to the Government of India, Revenue and Agriculture Department.
- The Hon'ble Mr. R. E. Enthoven, C.I.E., Secretary to the Government of India, Commerce and Industry Department.
- The Hon'ble Sir T. R. Wynne, K.C.S.I., K.C.I.E., V.D., M.I.C.E., President, Railway Board.
- The Hon'ble Mr. R. P. Russell, Secretary to the Government of India, Public Works Department.
- The Hon'ble Mr. J. B. Brunyate, C.I.E., Secretary to the Government of India, Finance Department.
- The Hon'ble Mr. W. H. Michael, Secretary to the Government of India, Finance Department (Military Finance.)
- The Hon'ble Major-General W. R. Birdwood, C.B., C.S.I., C.I.E., D.S.O., Secretary to the Government of India, Army Department.

C43 HD

16

D.-O. no. 249 (Political).

HOME DEPARTMENT.

Simla, the 29<sup>th</sup> May 1913.*Dear Sir Thomas*

As stated in His Excellency the Viceroy's private telegram to the Secretary of State, dated the 9th August 1911, orders were issued to all local Governments and Administrations directing that in future, in cases where enquiries or proceedings were pending against the conduct of any officers, all proposals for the promotion or conferment of honours on those officers should be held in abeyance until the enquiries or proceedings terminated. These orders were issued demi-officially on the 12th August 1911, and I enclose a copy of them.

2. Subsequently Mr. Montagu in his letter to the "*Times*" of September 25, 1911, on the subject of the Indian Police announced that the principle referred to above would be observed in the future. This announcement has resulted in a large number of representations being received by the Government of India from officers stationed in various parts of India, protesting against the principle enunciated as inequitable and unjust, and requesting its reconsideration. A specimen copy of one of the representations is enclosed. At the same time certain local Governments and Administrations drew the attention of the Government of India to the hardships which were likely to be caused by the enforcement of the orders. Copies of their letters are also enclosed for the Secretary of State's information.

3. The whole subject has therefore been carefully reviewed by the Government of India. It was recognised that the orders which had been issued were in fact open to many of the objections taken to them; that standing directions in such an important matter should be conveyed if at all in official orders; that it was practically impossible to provide in official orders for the various classes of cases which might occur; and that although the ill-judged action of one local Government had prompted the issue of the demi-official orders, there was no reason to suppose, now that attention had been called to the matter, that any further indiscretions of the kind were to be apprehended: and that the only satisfactory course was to withdraw the demi-official orders of 1911 and to replace them by official orders which would leave local Governments free to deal with each case as it arose, while emphasising the need of avoiding anything which would have the appearance of a challenge to the courts.

4. I am accordingly to report for the information of His Lordship that the demi-official orders of August 11, 1911, have now been withdrawn and the official orders a copy of which is enclosed have been issued.

*(sd) H. Wheeler*

To

Sir T. W. Holderness, K.C.S.I., His Majesty's Under Secretary of State for India.

*List of Enclosures.*

1. Demi-official letter to local Governments and Administrations, no. 1245-1254 (Establishments), dated the 12th August 1911.
2. Memorial of Arthur Mellor, Esq., I.C.S., dated the 25th November 1912.
3. Letter from the Government of Burma, no. 325-T., dated the 24th May 1912 (without enclosure).
4. Letter from the Government of Bengal, no. 1604-P., dated the 8th February 1912.
5. Letter from the Agent to the Governor-General in Rajputana, no. 3524, dated the 23rd September 1912 (without enclosure).
6. Letter from the Government of Burma, no. 985-T.—3-M.-30, dated the 21st October 1912 and enclosure.
7. Letter from the Government of Bihar and Orissa, no. 6334-A., dated the 31st December 1912 (without enclosure).
8. Letter to all local Governments and Administrations, no. <sup>231</sup>/<sub>242</sub>, dated the 30<sup>th</sup> May 1913.

LETTER TO LOCAL GOVERNMENTS AND ADMINISTRATIONS, NOS. 231-242, DATED THE 30TH MAY 1913. P. no. 26

The orders have now issued and have been reported demi-officially to the India Office by last week's mail.

As the whole matter began with a private telegram from the Secretary of State it is for consideration whether the action now taken should not be reported to the Secretary of State privately by telegram. The draft put up, which states the matter fully, may be submitted to His Excellency for orders.

W. S. MARRIS,—3-6-13.

I think this course would be a very wise one, if His Excellency approves of it.

R. H. CRADDOCK,—5-6-13.

Private Secretary to His Excellency the Governor-General.

hear I understand that the draft letter to local Governments has not issued yet. In view of the fact that a statement was made in the House of Commons by Mr. Montagu I do not like the idea of presenting the House with a "fait accompli" and a reversal of Mr. Montagu's statement. I propose that my private telegram should issue announcing the decision at which we have arrived, and that if we have nothing in reply from the Secretary of State, the letter to local Governments should issue after a short interval.

H[ARDINGE],—6-6-13.

*Demi-official letter from Sir J. H. DuBois, I.C.S., Private Secretary to the Governor-General, to W. S. Marris, Esq., C.I.E., dated Viceregal Lodge, Simla, the 7th June 1913.*

I return this file as it is.

His Excellency is unable to deal with it himself as he is in bed to-day, but his wishes are that telegraphic orders should go out at once to all local Governments directing them to hold in abeyance Home Department letter 231-242 of May 30th, as well as the demi-official 210-20 of the same date, and 221-30 of same date to other Departments.

Meantime a slightly modified private telegram is going to the Secretary of State, a copy of which will be sent to you after issue.

His Excellency then wishes the case to be brought up in Council next Friday, 13th.

I have informed Hon'ble Member by telephone. Please issue to-day the telegrams, demi-official telegrams and demi-official letters drafted.

W. S. MARRIS,—7-6-13.

*Telegram*  
D. O. nos. 288 to 291/293 to 298

*Dated Simla, the 7th June 1913.*

MY DEAR

Please hold in abeyance pending further orders Home Department demi-official letter

no. 210-20 Political, dated May 30th, 1913, regarding promotion of officers.

210  
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—Yours,—

—W. S. MARRIS.

To

The Hon'ble Mr. A. G. Cardew, C.S.I., Chief Secretary to the Government of Madras.  
The Hon'ble Mr. G. Carmichael, C.S.I., Chief Secretary to the Government of Bombay.  
The Hon'ble Mr. J. G. Cumming, C.I.E., Chief Secretary to the Government of Bengal.  
The Hon'ble Mr. R. Burn, Chief Secretary to the Government of United Provinces.  
The Hon'ble Mr. W. F. Rice, C.S.I., Chief Secretary to the Government of Burma.  
The Hon'ble Mr. H. LeMesurier, C.S.I., Chief Secretary to the Government of Bihar and Orissa.  
The Hon'ble Sir Benjamin Robertson, K.C.S.I., Chief Commissioner, Central Provinces.  
The Hon'ble Sir Arcadia Earle, K.C.I.E., Chief Commissioner, Assam.  
The Hon'ble Lieutenant-Colonel Sir G. Roos-Keppel, K.C.I.E., Chief Commissioner, North-West Frontier Province.  
The Hon'ble Lieutenant-Colonel Sir Hugh Daly, K.C.I.E., C.S.I., Chief Commissioner of Coorg.

*G. J. E. /*

*K. C. S. J.*

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*Demi-official letter from W. S. Marris, Esq., to the Hon'ble Mr. C. A. Barron, C.I.E., Chief Secretary to the Government of the Punjab, no. 292, dated Simla, the 7th June 1913.*

I am desired to request that the Home Department demi-official letter no. 214, dated the 30th May 1913, regarding the promotion of officers may be regarded as held in abeyance pending further orders.

D.-O., No. 300-309.

Simla, the 7th June 1913.

MY DEAR

I am desired to request that the Home Department demi-official letter no. 214 (Political),

dated the 30th July 1913 may be regarded as held in abeyance pending further orders.

Yours Sincerely,

W. S. MARRIS.

To

The Hon'ble Mr. L. C. Porter, C.I.E., Secretary to the Government of India, Education Department.

The Hon'ble Sir W. H. Vincent, Kt., Secretary to the Government of India, Legislative Department.

The Hon'ble Lieutenant-Colonel Sir A. H. McMahon, G.C.V.O., K.C.I.E., C.S.I., Secretary to the Government of India in the Foreign Department.

The Hon'ble Mr. J. H. Kerr, C.I.E., Secretary to the Government of India, Revenue and Agriculture Department.

~~The Hon'ble Mr. J. F. Grunning, C.I.E.,~~ <sup>Esq.</sup> Secretary to the Government of India, Commerce and Industry Department.

The Hon'ble Sir T. R. Wynne, K.C.S.I., K.C.I.E., V.D., M.I.C.E., President, Railway Board.

The Hon'ble Mr. R. P. Russel, Secretary to the Government of India, Public Works Department.

The Hon'ble Mr. J. B. Brunyate, C.I.E., Secretary to the Government of India, Finance Department.

The Hon'ble Mr. W. H. Michael, Secretary to the Government of India, Finance Department (Military Finance.)

The Hon'ble Major-General W. R. Birdwood, C.B., C.S.I., C.I.E., D.S.O., Secretary to the Government of India, Army Department.

1/20. No. 27.

*Telegram to all Local Govts. and Admins. No. 276-280, 282-289, dt. 7-6-13.*

1/20. No. 25.

*Letter to the Govt. of the Punjab, No. 282, dt. 7-6-13*

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TELEGRAM TO ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS, NOS. 276-280, 282-287, DATED PRO. no. 27.  
THE 7TH JUNE 1913.

LETTER TO THE GOVERNMENT OF THE PUNJAB, NO. 282, DATED THE 7TH JUNE 1913.

PRO. no. 28.

*Telegram P., from Viceroy to Secretary of State, no. 170, dated the 7th June 1913.*

*Private.*—Please see my private telegram, dated August 9th, 1911. As a result of Mr. Montagu's announcement in *Times* of September 25th, 1911, of the issue of orders stopping promotion of officers against whom enquiries or proceedings were pending, we have received nearly a hundred representations from officials protesting against the orders as being harsh and inequitable in practice. The representations were supported spontaneously by certain Local Governments. They argued that withholding of promotion in many cases amounted to a penalty which could not be redressed by retrospective compensation; and was thus violation of accepted principle that men were innocent till proved guilty. They referred also to hardship of delaying normal increases of salary during pendency of protracted proceedings; to undoubted danger that, in hope of harassing officials, the orders would greatly stimulate malicious charges; and to consequent demoralising effect upon the services generally. Moreover the orders had been issued demi-officially, and Local Governments represented forcibly that orders of such importance, if maintained, should be issued officially. We feel the force and justice of these arguments, and consider that it is desirable to amend and formalise orders. But no general orders can properly provide for all cases which may arise, and our clear opinion is that the matter is essentially one to be left to the discretion of Local Governments, and that there is no need to suppose, now that attention has been called to the matter, that any further indiscretions like that of Bengal Government in 1911 will occur. Accordingly we propose to withdraw the demi-official orders, and to issue brief directions to Local Governments to deal with such cases in future on the merits in such a way as to avoid any appearance of challenging the opinion of a judicial court. Papers have been forwarded demi-officially to India Office by letter of May 29th; but pending your receipt of the papers, the orders withdrawing the demi-official orders of August 11th, 1911, and the official orders referred to in paragraph 4 of the above-mentioned demi-official to the India Office, have been held in abeyance.

#### ORDER IN COUNCIL.

That the suspension of the orders to local Governments be approved.

H[ARDINGE],—13-6-13.

The reply of the Secretary of State may now be awaited.

H. WHEELER,—13-6-13.

*Demi-official letter from Sir J. H. Du Boulay, K.C.I.E., Private Secretary to His Excellency the Viceroy, to the Hon'ble Mr. H. Wheeler, C.I.E., dated the 18th July 1913.*

I enclose to you herewith a copy of a private telegram received this morning from the Secretary of State regarding the withdrawal of the Home Department demi-official orders of August 11th, 1911.

Will you kindly submit a draft private telegram to the Secretary of State furnishing the required information.

*Telegram P., from the Secretary of State for India to His Excellency the Viceroy, dated the 17th July 1913.*

*Private.*—Please refer to your private telegram of 7th June regarding the withdrawal of your Home Department demi-official orders of August 11th, 1911. Is Home Department circular no. 231 of May 29th, 1913, to Local Governments, which was forwarded to this office by letter of May 29th, now in force or is it still in abeyance?

Please see our letter to Local Governments, dated the 7th June 1913. A draft telegram to the Secretary of State is submitted for approval.

G. C. F.,—19-7-13.

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The draft telegram states the facts.

H. WHEELER,—19-7-13.

Draft private telegram approved.

Please issue.

H[ARDINGE],—21-7-13.

*Telegram P., from the Viceroy to the Secretary of State, no. 222, dated 21st July 1913.*

*Private.*—Promotion of officers. Your private telegram, dated the 17th July. We still hold in abeyance Home Department circular of 30th May 1913, to Local Governments.

*Telegram P., from the Secretary of State to the Viceroy, dated the 30th July 1913.*

Please see your Home Secretary's letter, dated May 29th, no. 249-Political. I understand that circular is intended to carry out officially the intention of the demi-official\* order issued by  
 \* Establishment Dep., August 1911, no. 12. you on the 12th August 1911. Subject to insertion in the last sentence of the word "anticipating or" before "challenging" and alteration of "opinion" to "finding" I assent.

The Secretary of State says that he understands that the intention of our circular of May 1913 is simply to make the demi-official orders of August 1911, official. This is not † the case.

† This is not quite correct. The Secretary of State's telegram may not be a complete statement of the case, but undoubtedly the idea of the present circular is to convey officially the idea underlying the demi-official letter of August 1911. In so doing, however, we have relaxed the inelastic provisions of the demi-official orders in an important particular.

C. W. E. COTTON.

as they may consider fit, honours or promotions in such cases, provided, of course, their action does not have the appearance of anticipating or challenging the finding of a judicial court.

The demi-official orders of August 1911 left no discretion to Local Governments, but made it obligatory on them to withhold, in every case, honours on, or promotions of, officers against whom proceedings were instituted until those proceedings had been completed. The circular, which the Government of India now wish to issue, leaves the discretion entirely to Local Governments to withhold, or not, for orders whether we should now authorise Local Governments and Administrations to act on our circular, modified as desired by the Secretary of State, or whether we should point out this misunderstanding to the Secretary of State before addressing Local Governments.

The Secretary of State has, however,

Allowance being made for the conciseness of phrase inevitable in a telegram, I doubt if there is any misunderstanding, and as the Secretary of State accepts with a slight verbal modification the circular proposed, I doubt if a further reference to him is necessary.

C. W. E. COTTON,—31-7-13.

His Excellency may see, and as the case was discussed in Council, the file may be circulated to Hon'ble Members.

A. L.,—31-7-13.

C. W. E. COTTON,—31-7-13.

The Order in Council of the 13th June will recall the facts.

The Secretary of State now accepts the circular of the 30th May 1913, subject to two small verbal changes which seem to be unobjectionable. So far that is satisfactory, and the orders may now issue with this slight modification.

As pointed out by Deputy Secretary above, the Secretary of State has worded his telegram curiously in his reference to the orders of the Establishment Dep., August 1911, no. 12. 12th August 1911, but the essential point is that he assents to the revised circular.

His Excellency should see, with a suggestion, that the papers may be circulated for information.

H. WHEELER,—2-8-13.

The great point is that he approves the orders proposed. Whether they are merely the official version of the non-official orders, or supersede them is a matter of no moment. The intention in spirit is the same. We warn Local Governments not to anticipate or challenge findings of judicial courts in these matters, instead of giving them orders which, while securing these



results, might also cause inconvenience and injustice in numerous cases. The official orders necessarily supersede the demi-official ones inasmuch as it is by the official orders rather than the demi-official that Local Governments will be guided.

I do not consider that any further reference to the Secretary of State is necessary.

R. H. C[RADDOCK],—4-8-13.

#### *Summary.*

The circumstances in which the circular orders of the 30th May 1913 were issued and held in abeyance pending a reference to the Secretary of State will be remembered.

The latter has now approved of them, subject to two slight verbal changes.

It is now proposed by the Home Department that they should issue as amended.

As the case has previously been before Council it is suggested that, with His Excellency's approval, the papers may be circulated.

H. WHEELER,—4-8-13.

Please circulate to Hon'ble Members.

H[ARDINGE],—6-8-13.

S. H. B[UTLER],—9-8-13.

S. A. I[MAM],—9-8-13.

W. S. M[EYER],—9-8-13.

E. D. M[ACLAGAN],—10-8-13.

O'M. C[REAGH],—10-8-13.

R. H. C[RADDOCK],—11-8-13.

With His Excellency's approval the orders may now issue.

H. WHEELER,—11-8-13.

H[ARDINGE],—12-8-13.

We had better reissue the order as slightly modified in supersession of the previous letter and not merely withdraw the demi-official orders suspending the former.

Please consider whether reply should be sent to the various memorials received on this subject. If so, it would apparently take the form of a reference to the revised official orders.

H. WHEELER,—12-8-13.

Three drafts submitted :—

- (i) letter to Local Governments and Administrations and endorsement to Departments of the Government of India ;
- (ii) demi-official letter to Local Governments and Administrations and to Departments of the Government of India ;
- (iii) letter to those Local Governments through whom memorials were submitted. This will dispose of all the memorials, except two, (1) from Mr. Vas received, contrary to rules, through the Private Secretary to His Excellency the Viceroy, instead of through the Local Government, and (2) Mr. Bell, Political Officer, Sikkim. No. (1) has been provided for by addition to draft III, and no. (2) we may ask Foreign Department unofficially, under whom he is serving, to inform him of the revised orders.

A. L.,—21-8-13.

C. W. E. COTTON,—28-8-13.

H. WHEELER,—29-8-13.

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D. O. nos. 516-536.

HOME DEPARTMENT.

Simla, the 6th September 1913.

MY DEAR  
DEAR

I AM desired to request that my demi-official <sup>telegram</sup>letter, no. <sup>288</sup><sub>289, etc.,</sub><sup>300</sup> dated the 7th June 1913, may be considered as cancelled.

2. A copy of the official orders on the subject of the conferment of honours or promotion on officers against whom criminal or civil proceedings have been instituted is being forwarded to you separately. The demi-official orders contained in Earle's letter no. <sup>1245</sup><sub>1246, etc.,</sub><sup>1254</sup> dated the 12th August 1911, should now be regarded as superseded.

Yours sincerely,  
H. WHEELER.

To

- The Hon'ble Mr. A. G. Cardew, C.S.I., Chief Secretary to the Government of Madras.
- The Hon'ble Mr. G. Carmichael, C.S.I., Chief Secretary to the Government of Bombay.
- The Hon'ble Mr. J. G. Cumming, C.I.E., Chief Secretary to the Government of Bengal.
- The Hon'ble Mr. R. Burn, Chief Secretary to the Government of the United Provinces.
- The Hon'ble Mr. C. A. Barron, C.I.E., Chief Secretary to the Government of the Punjab.
- The Hon'ble Mr. W. F. Rice, C.S.I., Chief Secretary to the Government of Burma.
- The Hon'ble Mr. H. LeMesurier, C.S.I., C.I.E., Chief Secretary to the Government of Bihar and Orissa.
- The Hon'ble Sir Benjamin Robertson, K.C.S.I., Chief Commissioner of the Central Provinces.
- The Hon'ble Sir Archdale Earle, K.C.I.E., Chief Commissioner of Assam.
- The Hon'ble Lieutenant-Colonel Sir G. Roos-Keppel, K.C.S.I., K.C.I.E., Chief Commissioner of the North-West Frontier Province.
- The Hon'ble Lieutenant-Colonel Sir Hugh Daly, K.C.I.E., Chief Commissioner of Coorg.
- The Hon'ble Mr. L. C. Porter, C.I.E., Secretary to the Government of India, Education Department.
- The Hon'ble Sir W. H. Vincent, Kt., Secretary to the Government of India, Legislative Department.
- The Hon'ble Lieutenant-Colonel Sir A. H. McMahon, G.C.V.O., K.C.I.E., C.S.I., Secretary to the Government of India in the Foreign Department.
- The Hon'ble Mr. J. H. Kerr, C.I.E., Secretary to the Government of India, Revenue and Agriculture Department.
- J. F. Gruning, Esq., Secretary to the Government of India, Commerce and Industry Department.
- The Hon'ble Sir T. R. Wynne, K.C.S.I., K.C.I.E., V.D., M.I.C.E., President, Railway Board.
- The Hon'ble Mr. R. P. Russell, Secretary to the Government of India, Public Works Department.
- The Hon'ble Mr. J. B. Brunyate, C.I.E., Secretary to the Government of India, Finance Department.
- The Hon'ble Mr. W. H. Michael, Secretary to the Government of India, Finance Department (Military Finance).
- The Hon'ble Major-General W. R. Birdwood, C.B., C.S.I., C.I.E., D.S.O., Secretary to the Government of India, Army Department.

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LETTER TO ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS, NOS. 494-505, DATED THE 23RD PRO. NO. 29.  
SEPTEMBER 1913, AND ENDORSEMENT TO ALL DEPARTMENTS OF THE GOVERNMENT OF INDIA,  
NO. 506-515, OF THE SAME DATE.

LETTER TO THE GOVERNMENTS OF BENGAL, BIHAR AND ORISSA, BURMA, CHIEF COMMISSIONER, PRO. NO. 36  
ASSAM, AGENT TO THE GOVERNOR-GENERAL IN RAJPUTANA, AND THE DIRECTOR-GENERAL,  
POSTS AND TELEGRAPHS, NOS. 537-542, DATED THE 23RD SEPTEMBER 1913.

Foreign Department.

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Action in regard to informing Mr. Bell of the revised orders is being taken separately by  
the Foreign Department as requested.

D. A. C.,—30-9-13.

B. J. GLANCY,—1-10-13.

H. WILKINSON,—2-10-13.

Home Department.

Exd. by—A.G.

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24  
CONFIDENTIAL.

No. 1604-P., dated the 8th February 1912.

*Pro. No. 12.*

From—The Hon'ble Mr. C. J. STEVENSON-MOORE, C.V.O., Chief Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Home Department.

I am directed to refer to the recent demi-official orders of the Government of India to the effect that all proposals regarding promotion of, or conferring honours upon, officers of Government should be held in abeyance in cases where enquiries or proceedings, whether executive or judicial, as regards the conduct of such officers are under contemplation or have been instituted, until such enquiries or proceedings have been completed. The above orders have been duly communicated to the officers subordinate to this Government. They have further, as their importance demands, formed the subject of careful consideration by this Government, and, as a result, the Lieutenant-Governor in Council feels it his duty to present to the Government of India certain objections both of substance and of form to the continuance of the orders as they stand.

*Establis Rep  
2 August 1911,  
No. 12.*

2. I am to premise that, so far as the conferment of honours goes, the Lieutenant-Governor in Council has no criticism to offer. Grants of titles or other honours are rewards of a purely discretionary character for special services. The Lieutenant-Governor in Council fully appreciates the advantage of the principle that an officer so honoured should be not only free from taint, but above suspicion, and is prepared to accept any rules of what stringency soever that may be laid down for the regulation of such awards. While, therefore, he believes that an examination of the objections of form which are taken below will show that in some cases these are not without application to the grant of honours, the following observations should be understood as referring solely to the promotion of officers.

3. Promotion, the Lieutenant-Governor in Council conceives, stands on an entirely different plane to the grant of honours. Honours are conferred as a matter of special favour and not of right; to withhold them implies no stigma. On the other hand, except for certain special post and higher grades in the different services for which selection by merit has been made the rule, promotion is ordinarily granted by seniority, and, as a matter of principle and practice, is withheld only by way of punishment imposed for misconduct or inefficiency. The Government of India appear to be under the apprehension that the orders in question merely formulate the existing practice. So far as concerns the promotion of officers this is not the case. The well-recognised practice of this province—and the Lieutenant-Governor in Council conceives it to be the only possible practice if officers are to retain their initiative and independence—is for Government to hold a departmental enquiry when a serious complaint is preferred, and pending final decision of any judicial proceedings which may be instituted, for the attitude of Government to be regulated by the result of such enquiry. In other words, the question whether an officer should be granted or withheld promotion is left to be decided by the discretion of Government in accordance with the circumstances of the individual case. The present orders, therefore, represent a definite departure from the existing practice, a departure which the Lieutenant-Governor in Council has reason to believe is viewed by members of the various services with the deepest foreboding. At the present time this is a matter of peculiarly grave concern. As a result of various causes, which it is unnecessary here to specify, the morale of the superior services in this province has in recent years been subjected to a very severe strain and for the time being an undue proportion of the officers seem to be suffering from a marked lack of enthusiasm and even from discontent. Such a state of feeling amongst those upon whose spirit and conduct the success of the administration peculiarly depends is most prejudicial to efficiency. The present moment, therefore, appears to the Lieutenant-Governor in Council to be a singularly inopportune one for imposing on the services a new and legitimate grievance. He considers the grievance legitimate, because considerations of equity appear to him to demand a continuance of the previous

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practice. To withhold promotion is a punishment, and to impose punishment as soon as proceedings, whether executive or judicial, are commenced against an officer, or even before the commencement, as soon as they are under contemplation, appears to the Lieutenant-Governor in Council to be a reversal of the basic principle of English justice—that every man should be held innocent until he is proved guilty. It is doubtless contemplated that in cases where promotion is withheld under this rule, an officer so debarred from promotion should on the conclusion of the proceedings, if his character is cleared, be restored, with retrospective effect, to the place which he would otherwise have occupied, or given an equivalent compensation. If that is the intention, the Lieutenant-Governor in Council ventures to think that a definite assurance to that effect is required from the Government of India. Even assuming that this is the intention, the fact remains that to withhold from an officer an increase of pay to which he would otherwise have been entitled amounts in itself to a substantive punishment. It may well be a peculiarly heavy punishment, where an officer is engaged in civil proceedings in which it is necessary for him to disregard considerations of expense to clear his character and preserve his means of livelihood, proceedings which, under the judicial system of this country, are too frequently protracted for periods not only of months but of years.

5. Again the Lieutenant-Governor in Council desires to invite attention to the very material differences between circumstances attaching to civil and criminal proceedings. He ventures to thin that even if it be decided that the orders should stand with regard to the latter class of cases, the circumstances of civil proceedings are such as to demand wider exercise of discretion on the part of Government. In the first place, criminal proceedings are, as a rule, much shorter in duration. In the second place, before Criminal process is issued, even if there is no police investigation or preliminary enquiry, the Magistrate has to satisfy himself that there are reasonable grounds for proceeding to trial. The orders of the Government of India take no account of the possible triviality of the charges brought. In criminal cases this is of little importance, for a petty criminal charge is generally promptly disposed of, but with civil suits the case is entirely different. A plaint may be laid on grounds of so trivial a character that an adverse decree would not materially prejudice the character of the defendant in the eyes of his superiors. But in civil suits there is no preliminary sifting, nor would the trivial character of the damage alleged in any way lead to expedition in disposal. As the orders stand it would appear that a discontented clerk may file a suit for damages against his superior officer on any false or frivolous grounds, and having in this way checked his promotion and caused him serious monetary loss may, when he can protract it no longer, withdraw from it and let it go by default. In other words, to keep promotion in abeyance pending civil proceedings may entail much heavier embarrassment upon much less substantial grounds than in the case of a criminal charge. Whatever procedure may be adopted in the case of an officer who is prosecuted on a criminal charge, to withhold promotion when civil proceedings are threatened or instituted would place the officers of Government at the mercy of any malignant opponent or discontented subordinate who chose to trump up a false case against them. In a country where false charges are brought so readily, such conditions might easily lead to a general paralysis of the administration. In fact the threat of a civil suit in such circumstances would prove to be a more powerful weapon than the offer of a bribe. Unlike the latter it could be applied without fear of punishment, and subject only, seeing the difficulty of bringing home prosecutions, to liability for costs, a liability which forms no sort of deterrent to a wealthy litigant or political organisation. It is difficult to conceive what more powerful weapon short of legitimising bribery could be placed in the hands of ill-disposed persons.

\* 6. Apart from the very strong objections of principle to these orders which the Lieutenant-Governor in Council has been compelled to state, there are other objections of form which he considers it essential should be removed, if the orders are to be maintained at all. In the first place, the term "conduct" has not been defined. It is no doubt intended to relate only to the conduct of an officer as a Government servant, since otherwise an officer might find his promotion barred by proceedings of a purely private character. The Lieutenant-Governor in Council considers that in a matter of this importance, it is due to the services that their liabilities should be more precisely expressed.

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7. In the second place, I am to point out that the original letter of the Parliamentary Under Secretary of State for India, on which it is understood these orders were based, refers only to cases in which "an enquiry or legal proceedings are pending." The orders of the Government of India go beyond this, and withhold promotion even in cases in which such enquiries are "under contemplation." It would appear, therefore, on the orders as they stand that an ill-disposed person might secure the harassment of an officer, without even going to the trouble of instituting proceedings in court, by simply notifying Government of his intention to institute such proceedings. I am to enquire if this was the intention of the Government of India, and if not, I am to say that the Lieutenant-Governor in Council desires that he may be favoured with more precise instructions on the point.

8. In conclusion, I am to say that the Lieutenant-Governor in Council considers the whole question to be of such serious importance to all Government servants that he desires to urge most strongly that, after a consideration of the matters above represented, the final orders of the Government of India in the matter should be issued in an official form to all Provincial Governments.

No. 3524, dated Mount Abu, the 23rd September 1912.

*P. No. 13.*

From—The Hon'ble LIEUTENANT-COLONEL W. C. R. STRATTON, C.I.E., Officiating  
Agent to the Governor-General in Rajputana,

To—The Secretary to the Government of India, Foreign Department, Simla.

I have the honour to forward a memorial from Mr. E. H. Kealy, I.C.S., Census Superintendent, Rajputana and Ajmer-Merwara, addressed to the Right Hon'ble the Secretary of State for India.

2. I venture to express my entire concurrence with Mr. Kealy's representations.

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NATIONAL ARCHIVES OF INDIA



94. *Sir J. D. Rees*,—To ask the Under Secretary of State for India, whether any rule has recently been introduced into the public service whereby the promotion of an officer against whom any proceedings are pending is prohibited ; and whether, in view of the fact that the proceedings against Mr. Weston took nearly three, and those against Mr. Clarke nearly five, years before completion, he will cancel this rule, if it exists, in view of its effect upon public officers against whom charges are brought sometimes, as in the cases cited, without justification.

*P. H.*

*Answer to Sir J. D. Rees' Question, no. 94, dated the 21st October 1912.*

The Answer to the first part of the Question is in the affirmative : but exceptional cases under this as under other rules can of course be considered on their merits.

NATIONAL ARCHIVES OF INDIA

No. 985-T—3-M-30, dated Maymyo, the 21st October 1912.

From—The HON'BLE Mr. W. F. RICE, C.S.I., I.C.S., Chief Secretary to the Government of Burma,

To—The Secretary to the Government of India, Home Department, Simla.

I am directed to invite a reference to the correspondence ending with your letter no. 1302, dated the 22nd June 1912, relating to the principles enunciated by the Parliamentary Under Secretary of State for India regarding the promotion of Government servants in connection with whose conduct enquiries or legal proceedings are pending. The matter formed the subject of a memorial from the Burma Commission Association, but no reply was given to that memorial, on the ground that it contravened the rule which requires that every officer wishing to petition the Government of India should do so separately.

2. Separate representations of a similar nature have since been submitted to the local Government by a number of individual officers of the Burma Commission; and I am to submit, as an example, a copy of the memorial received from Mr. J. D. Fraser, I.C.S., Deputy Commissioner of the Amherst District. The Lieutenant-Governor's views in the matter were set out in my letter no. 325-T., dated the 24th May 1912, and His Honour, therefore, thinks it sufficient merely to express concurrence in the arguments stated in Mr. Fraser's memorial. Sir Harvey Adamson hopes that, unless action has already been taken, the Government of India will see their way to move the Secretary of State to reconsider the orders, which are, in His Honour's opinion, inequitable.

Dated Moulmein, the 9th August 1912.

From—J. D. FRASER, Esq., I.C.S., Deputy Commissioner, Amherst,

To—The HON'BLE SIR HARVEY ADAMSON, M.A., LL.D., KT., K.C.S.I., I.C.S., Lieutenant-Governor, Burma.

Your memorialists beg to submit a representation regarding a matter which affects the interests of all Government officers in Burma.

2. A letter from Mr. Montagu, Under Secretary of State for India, stating the instructions issued for the guidance of the Government of India in regard to the promotion of Government servants against whom legal proceedings are pending, appeared in the "Times" newspaper (London) of the 25th September 1911.

Mr. Montagu said:—

"First as to the Midnapur case . . . . Meanwhile the men will not be employed in administrative office, and the promotions gazetted immediately after the hearing of the civil case, promotions which would in ordinary circumstances have been matters of the normal routine, have been cancelled. These are suspensory steps in no way final or condemnatory, but wise, as I think you will agree, pending the hearing of the Court of appeal. I may add that in future all proposals for promotions or bestowal of honorary titles are to be held in abeyance in cases where inquiry or legal proceedings are pending."

The principle above enunciated was confirmed by an answer given in Parliament.

3. The effect of this principle is to place it within the power of a private individual, by instituting legal proceedings to keep in abeyance the promotion of any officer against whom he may have ill-feeling, and by carrying on legal proceedings to withhold for a considerable period the promotion of that officer.

4. When a Government Officer, in the exercise of his functions, has to take any action distasteful to an individual, and the latter is disposed to make a grievance of it, a legal practitioner will find little difficulty in framing a plaint which seems to disclose a *prima facie* cause of action. The bringing and the prosecution of a false charge in Court are a frequent means of attack on an enemy. In these circumstances the risk to Government officers of loss and prejudice from the action

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mentioned in Mr. Montagu's letter is real and great for in the ordinary discharge of their official duties they have constantly to take action which may lay them open to proceedings of the nature above indicated.

5. Mr. Montagu's enunciation of principle refers to "all proposals for promotion". In the case of promotions to a higher grade without change of work, the vacancy (whether permanent or officiating) could be left unfilled and the officer concerned, if subsequently exonerated, could recover the arrears of pay. Even in that case the intermediate pecuniary loss might be extremely inconvenient and the officer would have been harassed by a considerable period of anxiety. But where the proposed promotion is from one appointment to another, for example, from Deputy Commissioner to Officiating Commissioner, the Government cannot leave the higher appointment vacant and the officer, if deprived of the promotion, merely on the ground that he is a defendant in a civil suit, must suffer an irretrievable loss of opportunity and a pecuniary damage which cannot be made good unless the State pays two officers for doing the work of one office.

6. If the principle to which exception is taken is enforced, it must have a demoralizing effect upon individual officers and impair the administration, as officers will hesitate to take prompt or effective action, notwithstanding their personal conviction that such action is essential to avert a political danger or prevent a serious abuse.

7. An officer who has rendered himself liable in a court of law to make compensation in damages to an individual who has brought a suit against him, has not necessarily done anything which involves any degree of moral turpitude or dereliction of duty, such as, between the officer and Government, would be considered blameworthy or deserving of punishment. Suits of this nature brought against an officer often turn on some act or omission of a more or less technical nature or on some irregularity in procedure involving no question of character, honesty or *bonâ fides*.

8. The issues to be tried in a civil suit brought by an individual against a Government officer are not the same as those which would arise upon a departmental inquiry by Government in relation to the same matter, and in a departmental inquiry the officer concerned might be able to satisfy Government, notwithstanding the existence of an adverse decree in the civil suit, of his good faith, and even of the absolute propriety of his conduct in the matter. Moreover, the officer concerned would in some cases be precluded, either under the provisions of the Evidence Act or by considerations of political expediency (neither of which limitations would arise in a departmental inquiry), from producing before the Court facts and documents which might be of the highest importance in establishing his good faith. It is submitted that Government should not, on the strength of a decree only, assume that an officer is in fault, and inflict punishment. Further it is submitted that Government should not, merely because a suit is instituted, suspend an officer's promotion or change his employment. The reputation and fortunes of every officer are at the disposal of Government and your memorialist fully recognizes the right to suspend an officer's promotion or employment when a *primâ facie* case of misconduct is made out to the satisfaction of Government. But it is urged that Government is bound to satisfy itself on the point and should not infer the existence of even a *primâ facie* case of misconduct from the institution of legal proceedings.

9. In these circumstances, your memorialist respectfully requests that His Honour the Lieutenant-Governor will recommend that the Secretary of State may be moved to reconsider the principle enunciated by Mr. Montagu.

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1/10. No. 16

No. 3018-A., dated Shillong, the 31st October 1912.

From—W. J. REID, Esq., I.C.S., Chief Secretary to the Chief Commissioner of Assam,

To—The Secretary to the Government of India, Home Department, Simla.

I am directed to submit three memorials addressed to the Right Honourable the Secretary of State for India by Messrs. F. C. Henniker, B. C. Allen and J. McSwiney, of the Indian Civil Service, serving in this province.

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NATIONAL ARCHIVES OF INDIA

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No. 3124-A., dated Shillong, the 11th November 1912.

1912 No. 14.

From—W. J. REM, Esq., I.C.S., Chief Secretary to the Chief Commissioner of Assam;

To—The Secretary to the Government of India, Home Department, Simla.

I am directed to submit two memorials addressed to the Right Honourable the Secretary of State for India by Messrs. H. A. C. Colquhoun and A. J. Lainé, of the Indian Civil Service, serving in this province.

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9—10

NATIONAL ARCHIVES OF INDIA

R. H.

**Q.—Sir J. D. Rees.**—To ask the Under Secretary of State for India, whether the rule recently introduced into the public service whereby the promotion of an officer against whom proceedings are pending is prohibited was initiated by the Government of India or by the Secretary of State; if by the latter, whether, before being sanctioned, the rule was considered in Council, and, if so, how many members of Council signified their approval of it; and whether such consideration, if any, was given before or after the Under Secretary of State made a statement in the House committing the Government to the course that has been followed. [5th December 1912.]

**A.—Mr. Harold Baker.**—The rule was initiated by the Government of India. [5th December 1912.]

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NATIONAL ARCHIVES OF INDIA

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No. 1613, dated Simla, the 20th December 1912.  
Office Memo. by the Private Secretary to the Viceroy.

1/20 No. 19

\* Memorial from J. Vas, Esq., I.C.S.  
Home Department.

Transferred,\* for disposal, to the Secretary to the Government of India in the

A formal acknowledgment has been sent to the enclosed.

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NATIONAL ARCHIVES OF INDIA

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170. No.

No. 111-Con., dated Calcutta, the 17th December 1912.

From—The HON'BLE SIR CHARLES STEWART-WILSON, K.C.I.E., Director-General of  
Posts and Telegraphs,

To—The Secretary to the Government of India, Department of Commerce and Indus-  
try, Simla.

I have the honour to forward, for favour of disposal, a memorial addressed to His Majesty's Secretary of State for India by Mr. P. G. Rogers, I.C.S., Postmaster-General on leave, in which he prays for the reconsideration of the principle enunciated by Mr. Montagu, under which, in future, proposals for promotion or bestowal of honorary titles are to be held in abeyance in cases where inquiry or legal proceedings are pending.

NATIONAL ARCHIVES OF INDIA

No. 6334-A., dated Ranchi, the 31st December 1912.

From—H. LeMESURIER, Esq., C.S.I., C.I.E., I.C.S., Chief Secretary to the Government of Bihar and Orissa,

To—The Secretary to the Government of India, Home Department, Delhi.

I am directed to submit, for the consideration and orders of the Government of India, a number of memorials received from officers serving in this province, in which they pray for a reconsideration of the orders which are understood to have been passed prohibiting the bestowal of titles on, and the promotion of, officers in whose cases inquiries or legal proceedings are pending.

2. The Lieutenant-Governor in Council is not aware of the precise nature of the decision which has been arrived at by the Government of India in this matter. In the letter from the Under Secretary of State, addressed to a correspondent, which appeared in the 'Times' newspaper, dated the 25th September 1911, it was stated that "in future all proposals for promotion or bestowal of honorary titles are to be held in abeyance in cases where enquiries or legal proceedings are pending." His Honour in Council, however, presumes that this general statement should be read with reference to the Midnapore case, which was then under discussion, in which grave charges had been made against certain local officials, and that it was never intended to apply the new rule to charges turning on some act or omission of a more or less technical nature, such as those to which paragraph 10 of the memorials refer. It is obviously unnecessary to stop the promotion of an officer pending the final decision of a case, if it is clear that no disciplinary action of so severe a nature will be necessary, even if the case goes against him. It is assumed that the rule is intended to apply only to cases where charges are made of gross official misconduct or imputing acts involving moral turpitude.

3. In cases of the latter character, the Lieutenant-Governor in Council has no hesitation in saying that honours should not be bestowed until the proceedings have been completed and the officer concerned has been absolved from blame. But, as regards promotion, the matter is not so simple. In this connection it appears necessary to distinguish between the stage where the case is still *sub-judice* and that where a decision has been arrived at by a Court of first instance. Where such a Court has found the charges to have been proved, His Honour in Council is clearly of opinion that the officer should receive no further promotion until the decision has been reversed by the Court of appeal or a final decision has been arrived at by Government as to the manner in which the officer should be dealt with. But he does not think that promotion should be stopped as a matter of course at an earlier stage of the case. It must be remembered that the mere stoppage of an officer's promotion is in itself a punishment, and, although the pecuniary loss which he may thereby incur can afterwards be made good to him, it is impossible to recompense him for the mental suffering and the loss of reputation involved. It would be in the highest degree unfair to place the slur which the stoppage of promotion would involve on officers who have not been proved to be guilty, unless *prima facie* grounds exist for believing that the charges can be made good. Whenever charges of this kind are made, the facts, so far as they can be ascertained by a summary enquiry, should be immediately reported, and Government should then decide each case on its merits. If it seems very unlikely that the charges are true, and especially if the case is one which Government is prepared to defend on behalf of the accused, the Lieutenant-Governor in Council thinks that promotion should not be stopped unless and until there is a finding against the officer in the Courts. He would suggest that where gazetted officers are implicated, the decision whether the case is or is not one in which promotion should be stopped should rest with the Government of India, and in other cases with the Local Government.

CONFIDENTIAL.

No. 489-A., dated Calcutta, the 17th January 1913.

*170. No. 2*

From—The Hon'ble Mr. C. J. STEVENSON-MOORE, C.V.O., I.C.S., Chief Secretary to the Government of Bengal, (Appointment Department),

To—The Secretary to the Government of India, Home Department, Simla.

I am directed to refer to the correspondence ending with your letter No. 1193, dated the 28th May 1912, and to forward, for transmission to His Majesty's Secretary of State for India, the memorials submitted by certain members of the Indian Civil Service named list below. The memorialists pray for a reconsideration of the principle enunciated in a letter to the Press from the Parliamentary Under Secretary of State for India, dated the 23rd September 1911, to the effect that all proposals for promotion or for the grant of honorary titles are to be held in abeyance in the case of Government servants against whom enquiries or legal proceedings are pending. In forwarding the memorials, I am to invite a reference to the views of this Government as expressed in my letter No. 1604-P., dated the 8th February 1912.

*Public A. May 1912, No. 179.*

*Pub. A., Suppl. 1912, Nos. 1-5*

2. I am to add that a number of other officers have also submitted similar memorials, but that as they do not, in some minor points, fully comply with the rules for the submission of memorials, they are being returned for correction. They will be forwarded subsequently.

*List of memorialists.*

1. Mr. R. B. Hughes-Buller, C.I.E.
2. A. K. Jameson,
3. „ A. Cassella.
4. The Hon'ble Mr. B. B. Newbould.
5. J. Donald.
6. „ „ C. J. Stevenson-Moore, C.V.O.,
7. Mr. A. Mellow,
8. „ A. Marr.
9. The Hon'ble Mr. H. L. Stephenson,
10. Mr. H. M. Veitch.
11. „ J. C. H. Macnair,
12. „ W. S. Milne.
13. „ J. Johnston.
14. The Hon'ble Mr. J. H. Kerr, C.I.E.
15. Mr. A. W. Dentith,

*Pro 90*

No. 1426-A., dated Calcutta, the 22nd February 1913.

From—The Hon'ble Mr. C. J. STEVENSON-MOORE, C.V.O., I.C.S., Chief Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Home Department.

In continuation of my letter no. 489-A., dated the 17th January 1913, I am directed to forward, for transmission to His Majesty's Secretary of State for India, the memorials submitted by certain members of the Indian Civil Service as per list enclosed :—

1. Mr. B. V. Nicholl.
2. A. G. Hallifax.
3. The Hon'ble Mr. J. G. Cumming, C.I.E.
4. Mr. F. C. French.
5. Mr. J. Lang.
6. Mr. Muhammad Yusuf.
7. Mr. H. F. Samman.
8. Mr. J. A. Ezechiel.
9. Mr. Kiran Chandra De.
10. Mr. R. C. Hamilton.
11. Mr. A. H. Cuming.
12. Mr. S. G. Hart.
13. Mr. A. N. Moberly.
14. Mr. Satyendra Chandra Mallik.
15. Mr. J. Cornes.
16. Mr. L. S. S. O'Malley.
17. Mr. L. Birley.
18. Mr. C. E. Payne.
19. Mr. J. C. Jack.
20. Mr. G. E. Lambourn.
21. Mr. W. D. R. Prentice.
22. Mr. J. A. Milligan.
23. Mr. D. C. Patterson.
24. Mr. P. H. Waddell.
25. Mr. J. H. Lindsay.
26. Mr. J. J. Barniville.
27. Mr. H. T. Cullis.
28. Mr. F. B. Bradley-Birt.
29. Mr. F. W. Strong.
30. Mr. E. Geake.
31. Mr. J. R. Blackwood.
32. Mr. J. Bartley.
33. Mr. G. H. W. Davies.
34. Mr. G. P. Hogg.

PROCEEDINGS OF THE  
HOME DEPARTMENT, OCTOBER 1913.

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Principles which should govern either the conferment of honours on, or the promotion of, officers against whom civil or criminal proceedings have been instituted, during the pendency of such proceedings.

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No. 1719-A., dated Ranchi, the 10th March 1913.

Pro. no. 1

From—The HON'BLE MR. H. LEMESURIER, C.S.I., C.I.E., Chief Secretary to the Government of Bihar and Orissa,

To—The Secretary to the Government of India, Home Department.

In continuation of the memorials submitted with the letter from this Govern-

1. Memorial of Mr. H. L. L. Allanson, dated 14th September 1912.

2. Memorial of Mr. J. R. Makeig-Jones, dated 8th January 1913.

3. Memorial of Mr. A. E. Soroopes, dated 15th January 1913.

in this Province.

C291HD

ment, no. 6334-A., dated the 31st December 1912, I am directed to submit, for the consideration and orders of the Government of India, three more memorials which have since been received from officers serving

42-43

NATIONAL ARCHIVES OF INDIA

41

No. 3298-A., dated Calcutta, the 15th April 1913.

From—The HON'BLE MR. C. J. STEVENSON-MOORE, C.V.O., I.C.S., Chief Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Home Department.

In continuation of my letter no. 1426-A., dated the 22nd February 1913,

1. Mr. N. Bonham-Carter.
2. Mr. W. N. Delevingne.
3. Mr. W. A. Marr.
4. Mr. T. K. Johnston.
5. Mr. H. G. Blomfield.

I am directed to forward, for transmission to His Majesty's Secretary of State for India, the memorials submitted by the members of the Indian Civil Service named in the margin.

41  
No. 231-242

FROM

THE HON'BLE MR. H. WHEELER, C.I.E.,  
*Secretary to the Government of India,*

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF BOMBAY.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF BENGAL.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BIHAR AND ORISSA.

THE CHIEF SECRETARY TO THE GOVERNMENT OF THE  
UNITED PROVINCES.

THE CHIEF SECRETARY TO THE GOVERNMENT OF THE  
PUNJAB.

THE CHIEF SECRETARY TO THE GOVERNMENT OF BURMA.  
THE HON'BLE THE CHIEF COMMISSIONER OF THE  
CENTRAL PROVINCES.

THE HON'BLE THE CHIEF COMMISSIONER OF ASSAM.

THE HON'BLE THE CHIEF COMMISSIONER AND AGENT  
TO THE GOVERNOR-GENERAL, NORTH-  
WEST FRONTIER PROVINCE.

THE CHIEF COMMISSIONER OF COORG.

THE CHIEF COMMISSIONER OF DELHI.

*Simla, the 3<sup>rd</sup> May 1913.*

Home Department.  
Political.

SIR,

In connexion with various representations received from local Governments, the Government of India have recently had occasion to consider the question of the principles which should determine either the conferment of honours on, or the promotion of, officers against whom proceedings have been instituted, either in the civil or criminal courts, during the pendency of such proceedings. The matter is one of importance, both to the officers concerned and to the Government; and it has attracted some attention recently owing to the action of a local Government which incautiously gazetted certain officers, whose conduct had incurred judicial censure, to promotions which but for such circumstances they would have normally attained; and which thereby laid itself open to the reproach of appearing to disregard the finding of a court of law. Such a result is greatly to be deprecated. But the Governor-General in Council on full consideration sees no need to issue formal instructions (which could not be expressed in such a way as to cover all the possible cases which might arise) in a matter which he believes may safely be entrusted to the judgment of local Governments concerned. His Excellency the Governor-General in Council accordingly proposes to leave it to local Governments and Administrations in future to deal with all such cases as they arise. He feels sure that local Governments will pay due regard to the advisability of avoiding any action which might have the appearance of challenging the opinion of a judicial court.

I have the honour to be,

SIR,

Your most obedient Servant,

W. S. MARRIS,  
*for Secretary to the Government of India.*

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PROCEEDINGS OF THE  
HOME DEPARTMENT, OCTOBER 1913.

Principles which should govern either the conferment of honours on, or the promotion of, officers against whom civil or criminal proceedings have been instituted, during the pendency of such proceedings.

Pro. no. 27.

Telegram no. 276—280-282—287, dated the 7th June 1913.

From—The HON'BLE MR. H. WHEELER, C.I.E., Secretary to the Government of India,  
Home Department,

To— The Chief Secretary to the Government of Madras.  
The Chief Secretary to the Government of Bombay.  
The Chief Secretary to the Government of Bengal.  
The Chief Secretary to the Government of Bihar and Orissa.  
The Chief Secretary to the Government of the United Provinces.  
The Chief Secretary to the Government of Burma.  
The Chief Commissioner, Central Provinces.  
The Chief Commissioner of Assam.  
The Chief Commissioner of the North-West Frontier Province,  
The Chief Commissioner of Coorg.  
The Chief Commissioner of Delhi.

Please hold in abeyance pending further orders Home Department letter

no. 236 (Political), dated the 30th May 1913, respecting promotion of officers.

Pro. no. 28.

No. 281, dated Simla, the 7th June 1913.

From—The HON'BLE MR. H. WHEELER, C.I.E., Secretary to the Government of India,  
Home Department,

To—The Chief Secretary to the Government of the Punjab.

I am directed to request that, with the permission of His Honour the Lieutenant-Governor, the Home Department letter no. 236, dated the 30th May 1913, respecting the promotion of officers may be held in abeyance pending further orders.

Exd. by—A.G.



43

Nos. 494-505.

for No 29.

FROM

THE HON'BLE MR. H. WHEELER, C.I.E.,

*Secretary to the Government of India,*

TO

ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS.

28<sup>27</sup>

*Simla, 28th September 1913.*

Home Department.  
Political.

SIR,

IN continuation of my telegram, no. <sup>276</sup><sub>277</sub>, dated the 7th June 1913, I am  
(\*To Punjab only,) directed to request that the enclosed letter may be substituted for Home Department letter no. <sup>231</sup><sub>232</sub> of the 30th May 1913 and that the <sup>telegram</sup><sub>letter</sub> referred to above may be regarded as cancelled.

I have the honour to be,

SIR,

Your most obedient Servant,

H. WHEELER,

*Secretary to the Government of India.*

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Nos. 506-515.

Copy together with copy of the enclosure forwarded to (all Departments of the Government of India) for information and guidance.

By Order,

C. W. E. COTTON,

*Deputy Secretary to the Government of India.*

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FROM

THE HON'BLE MR. H. WHEELER, C.I.E.,

*Secretary to the Government of India,*

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF BOMBAY.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF BENGAL.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BIHAR AND ORISSA.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF THE  
UNITED PROVINCES.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF THE  
PUNJAB.  
THE CHIEF SECRETARY TO THE GOVERNMENT OF BURMA.  
THE HON'BLE THE CHIEF COMMISSIONER OF THE  
CENTRAL PROVINCES.  
THE HON'BLE THE CHIEF COMMISSIONER OF ASSAM.  
THE HON'BLE THE CHIEF COMMISSIONER AND AGENT  
TO THE GOVERNOR-GENERAL, NORTH-  
WEST FRONTIER PROVINCE.  
THE CHIEF COMMISSIONER OF COORG.  
THE CHIEF COMMISSIONER OF DELHI.

*Simla, the 30th May 1913.*

Home Department.  
Political.

SIR,

In connection with various representations received from local Governments, the Government of India have recently had occasion to consider the question of the principles which should determine either the conferment of honours on, or the promotion of, officers against whom proceedings have been instituted, either in the civil or criminal courts, during the pendency of such proceedings. The matter is one of importance, both to the officers concerned and to the Government; and it has attracted some attention recently owing to the action of a local Government which incautiously gazetted certain officers, whose conduct had incurred judicial censure, to promotions which, but for such circumstances, they would have normally attained, and which thereby laid itself open to the reproach of appearing to disregard the finding of a court of law. Such a result is greatly to be deprecated. But the Governor General in Council, on full consideration, sees no need to issue formal instructions (which could not be expressed in such a way as to cover all the possible cases which might arise) in a matter which he believes may safely be entrusted to the judgment of the local Governments concerned. His Excellency the Governor General in Council accordingly proposes to leave it to local Governments and Administrations in future to deal with all such cases as they arise. He feels sure that local Governments will pay due regard to the advisability of avoiding any action which might have the appearance of anticipating or challenging the finding of a judicial court.

I have the honour to be,

SIR,

Your most obedient servant,

H. WHEELER,

*Secretary to the Government of India.*

45  
Nos. 537-542.

1/No. No. 32

FROM

THE HON'BLE MR. H. WHEELER, C.I.E.,  
*Secretary to the Government of India,*

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF BENGAL.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BIHAR AND ORISSA.

THE CHIEF SECRETARY TO THE GOVERNMENT OF BURMA.

THE HON'BLE THE CHIEF COMMISSIONER OF ASSAM.

THE AGENT TO THE GOVERNOR-GENERAL IN RAJPUTANA.

THE DIRECTOR-GENERAL OF POSTS AND TELEGRAPHS.

23  
*Simla, the 6th September 1913.*

Home Department.  
Political.

SIR,

1. *Bengal.*  
No. 1604-P., dated the 8th February 1913.  
No. 489-A., dated the 17th January 1913.  
No. 1426-A., dated the 22nd February 1913.  
No. 3298-A., dated the 15th April 1913.
  2. *Bihar and Orissa.*  
No. 6334-A., dated the 31st December 1912.  
No. 1719-A., dated the 10th March 1913.
  3. *Burma.*  
No. 985-T.-3-M.-30, dated the 21st October 1912.
  4. *Assam.*  
No. 3018-A., dated the 31st October 1912.  
No. 3124-A., dated the 11th November 1912.
  5. *Rajputana.*  
No. 3524, dated the 23rd September 1912.
  6. *Director-General of Posts and Telegraphs.*  
No. 111-Confidential, dated the 17th December 1912.
- \* Copy attached for Rajputana and Director General of Posts and Telegraphs.

In reply to your letter(s) noted on the margin, I am directed to refer you to the letter\* from the Government of India in the Home Department, no. <sup>23</sup>22, dated the 30-5-13 September 1913, under which revised orders have been issued on the subject of the conferment of honours or promotion on officers against whom civil or criminal proceedings have been instituted. I am to request that the memorialist(s), may be duly informed of them.

2. [To Bengal only.] Mr. J. Vas, I.C.S., submitted a memorial direct to His Excellency the Viceroy. He may also be informed of the revised orders issued on the subject.

I have the honour to be,

SIR,

Your most obedient servant,

H. WHEELER,

*Secretary to the Government of India.*