

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.	97	Press ~~Mis.~~
Dated	18. 2.	19. 7. 37

Not to be folded or roughly handled

Copy Opinion

A letter like this of Dr Baileys amounts in my opinion to a great public nuisance, and as such ought to be at once abated or at least its repetition strictly prohibited.

2 It is also objectionable upon another ground as taking up the time and attention of Government under a false pretence that of offering important and valuable suggestions of which not a trace that I can discover - is to be found in the letter, after wading through 31 Paragraphs, filling 49 pages of foolscap, written in so wordy diffuse and incoherent a style, that in manuscript it was quite bewildering, and even when I received it in a printed form I found it impossible to grapple with the contents except by making an abstract of the whole.

3 In para 2 Dr Baileys professes that he wrote this letter in order to submit to Government his views "as to the necessity for and the means of"

- 1 "expediting the settlement of the National Debt"
- 2 "Saving the money of the State and its subjects"
- 3 "Saving the time of the officers of Government & of the community"
- 4 "Saving the public from appearing for years as they do in doubtful transactions"

5 "Doing full justice to the Creditors especially
the poor and ignorant and unformed"

6 "Guarding from the community, the temptation
to immoralities" in the "a magnificent"

4. Under cover of this magnificent preamble
Dr Balfour proceeds. Para 4. to inform Govern-
ment that in his opinion they have committed a
grave and lamentable error in dissolving the
Commission of which he was a member, and
in allowing Act 30 of 1858 to be substituted
for it. especially without consulting him
and allowing him to submit his opinion as
to the feasibility of Mr Dale's "observations"
which Dr Balfour thinks led to these results.
He intimates, delicately, that he considers
Government to have unduly withheld "these
opinions" (whether he here means Mr Dale's
observations or the opinions which he himself
did not submit, I am quite unable to say,
from the Honorable Court. explains why it
was that he did not "unasked and seemingly
undesired" "obtrude his opinion" recommending
Government to retain the "Commission of which
he was a past member", and cautiously to avoid
the Legislative Council and the Supreme Court.
He tells Government that they are aware that
his silence proceeded not merely from his being
kept in the dark, and not being consulted,
but because "Private Society and the Public
press was 'worked and a dark curtain' was
'thrown obliquely on the Commission' which
he seems to think was cruel, used, in that
it

it experienced no special protection from
Government under these distressing circumstances.
He reminds Government how Mr Pearce R.
the Legislative Councillor by his remarks
in Council so "derogated from the worth" of the
Commissioners that he Dr Balfour felt in-
constrained to wait on the Governor, but was
graciously pleased to be "content with his Lordship's
reply": in addition to which Dr Balfour informs
Government, that he "accepts" ten letters from
the Government Collector as an acquittance in
"full, as regards himself of all disparaging
"attacks on the composite body," and thus arrives
at the comfortable conclusion that he may
now with a clear conscience, offer his
suggestions to Government, though he fears
too late to be more than partially useful.
They will however he says, undoubtedly expedite
a settlement but he does not "anticipate" they
will enable it to be effected more cheaply.

5 Dr Balfour had previously personally
informed me of his opinions in these matters
on the 4 October. the Government Collector and
Dr Balfour with several of the Durbar servants
met at my house, in order that I might
ascertain what evidence existed respecting
Mr Craithorn's claim and decide on the course
to be pursued respecting it. Dr Balfour at the
very commencement took occasion to observe
with great emphasis of voice and gesture, that
"he must premise that he utterly disapproved
"of the whole course now pursued respecting
the 1

"the late Nabob's affairs" which obliged me to reply that "very likely he did but as we had much to do and little time to do it in, it would be desirable to proceed to business and not waste time by talking of opinions which could concern no one but himself" "Indeed!" Dr Balfour replied "why then may I ask, am I brought here?" "Simply" "I said to furnish the Law Officers of Government with all the information respecting Mr Crathorn's claim which yourself or your Records or these native officers can supply and to act as Interpreter" We then proceeded with business but when it became necessary to refer to Act 30 of 1858 on some point, Dr Balfour again exclaimed, with uplifted hands and voice "Oh! that blessed Act! Thank God I had nothing to do with its preparation" to which I replied "I am quite aware of the fact, and entirely agree with you in considering it a fit subject of thanks giving." I was at however prepared for his adopting so similar a tone in volunteering his opinions on these matters to the Government.

Throughout his letters in various paragraphs, Dr Balfour reiterates that his opinion always was, and now more strongly than ever that a Commission was not only the best way of settling the Nabob's debts, but was the only medium by which "full justice" could be done to creditors and the state; that the Act 30 of 1858 and the intervention of the Supreme Court are fraught with evil consequences. For all which he considers Government responsible; he

he tells Government that whatever course they take, whether they admit or dispute certain claims, Government must adopt the very same measures which in my letters N° 1620 I recommended - and in para 5 of Extract. minute consultation N° 673 were repeated and in forms them that he entirely differs from the opinion of Government expressed in the last two sentences of para 4 of Extract. minute 3 consultation N° 673 of 12 October last. Now if Dr Balfour does bona fide believe that, by reiterating that his opinions on these matters are in direct opposition to those deliberately and long since adopted by Government he will induce Government to reappoint the superseded Commission, and to obtain the repeal of Act 30 of 1858 why then well and good but if not, I do submit that the course he has adopted is as objectionable as it is unprecedented and inconvenient.

But as Act 30 of 1858 is in Dr Balfour's opinion it never the less exists and all claims preferred under it must, he admits, be dealt

"These cases must come on their own. I do not know of any means of preventing them being brought forward. I am not aware of any means of diminishing the extent of the agitation & which these doubtful cases will create" para 4.

with in the Supreme Court but, since the Act is not very likely to be repealed it might have been supposed that Dr Balfour would have found some consolation in being able to state (para 2) that "it has nevertheless

been found impossible to proceed without

"a Commission - I have had the honor of being
"Solicitor Sole Commissioner" & again, that
the duty thrown on him by the Government
Solicitor - "re constituted him Solicitor Commissioner"
with (as Dr Pal four is pleased to say, but as I
most distinctly deny) "Arbitrary power of
virtually determining on every case" submitted
to him - especially when he reminds Govern-
ments that he "feels no responsibility which
can be thrown on him" and that he possesses
such "natural facility for conducting varied
business" (para 31) that he states gravely, para 32
that he could settle in two months "what the
Judges could not possibly complete in less than
three years" - and again para 21 he says of
certain claims "the Court could not decide them
for years and they all could be decided" - by
himself he evidently means - "within the course
of a few weeks" and again in para 22 that
"another item" "which the Judges never for years
could complete" to him Dr Pal four "would be
a very simple matter". So far however from
this arbitrary power and importance pleading
Dr Pal four he finds in it his main grievance
for he says "I remain wholly unheard of by
the Community only the Government" he
considers that he is not openly recognized "that
he is "no sharer" in the "honors credit and esteem
emanating from success" - that he is "unnoticed"
and so forth. And this seems to me really the
substance, the pit of this interminable
pibble. The "solid pudding" is not enough
Dr

Dr Pal four finds for the "praise" also not from
Government only, but from "the Community"
as well. on this, the point "says Dr Pal four
"I claim the just consideration of Government"
8. I do full justice to Dr Pal four as a zealous
hard working public servant, I believe that no
degree for mere salary has any share in his
urgent recommendation to reappoint a paid
Commissioner of which he would certainly be a
principal if not the sole member and I allow
it to be fair and natural to desire to have the
sole credit for the due performance of his duties
but I do submit to Government that Dr Pal four
ought to leave to them to do him justice that
he is not justified in supposing them wholly
ignorant of the duties which act 30 of 1858
necessarily entail upon whoever fills the office
of the Principal Agent. and that no craving for
being "heard of by the Community" or for sharing
in their eyes, in the "honors credit and esteem
emanating from success" warrants Dr Pal four
in so entirely misconceiving his real position
and duties, and so needlessly occupying the time
of Government and its servants as he has done
in his present letter.
9. Dr Pal four lectures on the various errors
committed by Government in not consulting him
in acting contrary to his opinion and in rejecting
his offers, Government will no doubt duly
appreciate, but in justice to the Supreme Court
and Her Majesty's Judges I feel it my duty to
submit to Government whether Dr Pal four is
justified.

justified in penning what I can only call such
libels on the administration of public justice
as the following. I do not mean merely, such
passages as those already noticed where he states
that "the charges could never for years complete"
what he considers very simple matters such
as he could settle in a few weeks! I refer
to his statement in para 30 that all claimants
would prefer any other tribunal
to the Supreme Court. a statement which I am
satisfied is directly contrary to the fact. but
"in every legitimate case the
persons would prefer deciding
in any other way than in
Her Majesty's Supreme Court
of Judicature. but in all
doubtful cases I need entertain
no hesitation in expressing
my belief that the claimants
would prefer the Court"
in which just decisions could be come to, in
cases like the present. Again that "it is not
a case being decided by Law in a court
where that all truth is established" and again
that "the world recognize" that it is the robustness
of industry and the Barriers, intellect "on which
more than all the merits of the case, the
decision depends". I only notice these passages
in order to submit to Government whether
any public servant is warranted in obtruding
upon the Government such gratuitous and
unfounded remarks under the pretence of
submitting

that in all doubt-
ful or fraudulent
cases the claimants
would prefer the
Court. Again in
para 30 that "the
evidence admissible
in a court of Judicature
is "not of a character

grounds Dr Palfour has formed this most un-
gratuitous supposition or in what respect he
considers Government or their advisers to have
erred Dr Palfour preserves a mysterious silence.
I can only conjecture that he may possibly mean
that he supposes Government to be not aware that
the Act embraces debts contracted by the Regent
during the nabob's minority. If this be really Dr
Palfour's meaning seeing that the Preamble
of the Act makes distinct mention of this class
of Nabob's debts in no less than two places*

"And to be as the Nabob died
leaving debts and liabilities to
a large amount unsatisfied
some of which were contracted
by him self and some by
Azem Sah (Grand Nabob in
Regent's name)"
"All such debts as shall be proved
to have been fairly and justly
contracted by the said Nabob
or on his behalf during his
infancy by the said Azem
Sah as Nabob Regent"

I must that I have not thought
it necessary to obtrude upon
Government any advice or opinion
whatever upon so plain and
obvious a matter; still less have
I felt myself at liberty to assume
Government to be ignorant upon
the subject. If this be not what
Dr Palfour means I am unable
to divine his meaning.
12 In paras 11 and 13 Dr Palfour
recommended my opinion being
taken upon two points, a very
legitimate recommendation.

doubtless, but certainly not one of his reasons
(as described by him self in para 2) for writing
this letter, nor seeing that the recommendation
is conveyed in about four lines, requiring

pages of Foolscap. Before attempting to answer the points here referred to, I must ascertain (as I shall do either directly or through the Government Solicitor without troubling Government, the nature of the engagements and duties or offices of the persons called in one place "Deys cars Pensioners, Syed and Keag retainers in another place "non doing duty Retainers" and in a third place "Retainers Bazar Sadaat, Pensioners and "keag" and I must also ascertain precisely what it was that the late nabob did, and obtain copies of his orders respecting the wages spoken of in paras 11 and 12. In the former Dr Balfour speaks of orders "deferring or suspending or discontinuing" the portions of his servants wages" but in para 12 he says "His Highness in his life time ordered stoppage" &c I can give no till I know exactly what the orders were. I shall tell I have the exact facts fully before me.

13 In para 17, 18, 19, Dr Balfour says that exclusive of the Istafah Cutcherry cases (about 1000 in number) there is a list of 643 claims averaging Rupees 100 in each case and that the Istafah Cutcherry cases may include 500 such small cases. In para 21 he says the Court could not decide these cases for years but he sees no difficulty in them, and they all could be decided in the course of a few weeks and the decision within

submitting valuable suggestions calculated, amongst other things to "save the time of the officers of Government, and of the community" para 2.

10 To Dr Balfour's assertion (made in order to shew the great expense of working Act 30 of 1858) that "it is generally supposed that the Mahomedan Interpreter will earn about Rupees 20,000 for translations alone" it may suffice to say that Rupees 2000 or one tenth of Dr Balfour's supposition is the estimate of those much better able to judge as yet, the only expense of this kind incurred by Government has not exceeded Rupees 28. But surely mere supposition resting on no tangible foundation, is not a legitimate ground upon which thus to occupy the time of Government. Dr Balfour's next statement is that a committee appointed by the late Nabob settled about amounting to Rupees 139,000 for Rupees 37200 and that "this alone might suffice to prove the correctness of Dr Balfour's views, that a commission is vastly preferable to the Supreme Court. To my humble judgment it proves nothing of the sort. It proved only that the claimants knowing that they had to deal with a Committee from whose decision there was no appeal, and who were subject to no law on being offered Hobson's choice, Rs 37200 or nothing took the sum so offered - connected with (his)

this subject is Dr Balfour's remark in para 10 that while the claims under act 30 of 1858 are being investigated in the Supreme Court "Government as Defendant and its subjects claimants" the community "will regard Government as in opposition to them, and it is not politic for Government to be in opposition to its people". I can see neither sense nor meaning in such remarks unless Dr Balfour seriously means that Government ought to admit every demand made on it by any of its native subjects. He seems quite unaware that unless he is prepared to recommend such a course the "impolitic opposition" which he talks of, would exist just as much if the settlement of the nabob's debts were referred to a Commission with this material difference that in the latter case, Government would be not only equally "in opposition to its people" but would also be judge in its own cause. Any decisions in favor of Government, if made by a paid servant of that Government, holding his appointment at the pleasure of that Government, could hardly be expected to obtain as much credit with the public for impartiality as those passed by the Supreme Court.

11. In paras 8 and 9 and 23 Dr Balfour intimates that he considered "that Government have not been kept duly informed by their advisers as to the extent of jurisdiction conveyed by act 30 of 1858" and that Government is "seemingly unaware" "of the extent of the act" upon what grounds

within a few weeks of the large number of 1200 claims would greatly expedite the conclusion of these affairs". In a similar strain in the next paragraph he speaks of "about 300 wage claims" lodged in the Patafah Cutcherry and "recognized and treated as debt along with about 1000 other claims of kinds" "the settlement of these wages would be a very simple matter and to their extent settlement of the Carnatic affairs would be expedited". To say that the settling of many hundred Carnatic claims would greatly expedite the conclusion of these affairs (meaning I suppose all the Carnatic business) seems rather a self evident proposition hardly requiring to be demonstrated at such formidable length, but, when Dr Balfour leaves it to be inferred as he here does (for his meaning to me at least is painfully obscure) that his settling these hundreds of claims would release the Supreme Court of that amount of business he only shows how totally uninformed he is on points so easily within his reach that I do submit he ought to have made some attempt to inform himself upon them, before making his ignorance a plea for occupying the time of Government at such portentous length. In paras 10 and 16 he professes his inability to "form an opinion of the number of cases" "what may be the entire number of cases I have no means of now stating" This is not the fact. A simple inquiry at the office

of either the Registrar or the Government Solicitor would have informed Dr Balfour that the whole number of declarations filed up to and inclusive of the 24th November were 392 and 18 since then total 410.

14. These figures would I presume have satisfied Dr Balfour that his 1200 small cases of Rupees 100 each and his 300 wage claims lodged in the Istafa Culeherry and the 1000 other cases there, cannot possibly be compressed in the 410 cases lodged in Court that therefore the Supreme Court can have nothing to do with them and therefore that the handing over of these cases to Dr Balfour for settlement would in no way whatever save the time of the Supreme Court or expedite the settlement of the claims which the Court will have to decide or save time or expense to Government or its servants so far as act 30 of 1858 is concerned or in any way benefit the morals of the community or save it from the perils which so alarm Dr Balfour. These figures might therefore have considerably curtailed the dimensions of Dr Balfour's letter.

15. In para 10 Dr Balfour says "if the Court can be relieved of all cases regarding which there is little doubt the whole of the doubtful transactions could be disposed of in a few terms" Dr Balfour himself and the records and native employees under his control are the main, almost the only source, from which I

can rely to be furnished with evidence is, I repeat to enable me to say which are the cases regarding which there is little doubt. As yet, Dr Balfour has not met with one such, except, perhaps Mr Grattons; all the others of which particulars have as yet been furnished Dr Balfour has declared to be, in his opinion inadmissible. I can only say that I will at once relieve the Court of all cases regarding which there is little doubt, if Dr Balfour will only furnish me with evidence to enable me to ascertain which they are.

16. In conclusion I come to Dr Balfour's complaints of the course adopted by the Government Solicitor with my full concurrence in forwarding to him the particulars of each claim as soon as filed in Court, and requesting to be early furnished with all information in Dr Balfour's power respecting the same. No other course could have been taken. The Records and the native employees under Dr Balfour's control constitute the only sources to which the Law officers of Government can look for information in these matters; but in requesting Dr Balfour to furnish such information and his opinion as to the validity of each claim, wholly or in part, I most distinctly deny that Dr Balfour was ever allowed, or that there was ever any idea of allowing to him the "Arbitrary power of virtually determining" on every case submitted to him, which he has so

to one, recently assumed: He is simply required to supply information, and evidence, and if more importance is attached to his information than to that of other witnesses, it is simply because he is naturally supposed from having been for years the Government agent at Chepauk and Paymaster of Carnatic stipends to possess or have the means of obtaining more and better information respecting the nabob's affairs than others have. Dr Balfour may rest assured that he will never be permitted far less called upon, to exercise any such "arbitrary power" as he alludes to, while Act 30 of 1858 is in force and I have the honor to be Advocate General. He may be equally assured, that, so long as he furnishes me with all the information and evidence in his power, no blame will be laid on him by me or the Government Solicitor, (or I think I may venture to say by Government, for any thing that may go wrong, while, though Dr Balfour may possibly still remain "unheard of by the community"), I shall take care that, with Government at least, Dr Balfour shall have full opportunity to claim all the "honors credit and esteem" Government may consider due to him having done his duty in this respect. Dr Balfour further observes that he doubts if the course at present pursued by the Government legal servants (in referring these claims to him with a view to his furnishing information respecting them) be correct, as he before stated

hard

Dr Balfour on these points, his objections, requests and complaints are all beyond the power of the Government Solicitor or myself to remove or satisfy. The claimants file the particulars of their claims whenever they choose, and may move to have them heard 21 days after filing them. All we can possibly do is to furnish copies to Dr Balfour forthwith on the filing of the particulars in the Registry of the Court and this has been done in every case.

18. I have just observed that the claimants may file the particulars of their claims whenever they choose. neither the Government nor its law officers nor the Court have any power to compel them to do so until they please, and I would pointedly request the attention of Government to this very grave defect in the act, with a view to their moving the Legislative Council to amend it forthwith, suspending the usual forms for the purpose.

19. All claimants have long since had ample notice by the publication of the draft act, and the six months that have now elapsed since the act became law, and had ample time to prepare their particulars in all cases of bona fide claims, and there is grave reason to suppose that, in several instances, the continuing to withhold particulars of claims now though six months have elapsed since the

the

the passing of the Act, proceeds from fraudulent motives, and a desire to concoct and fabricate evidence to support these claims, while the recent felonious abstraction of two of the late Maharajah's state seals, and information connected therewith points strongly to an intention to fabricate Bonds bearing date during the time of the Regency of Prince Azem Sah, when those seals were actually used to authenticate Sircar Bonds.

20. A very short Act, such as I herewith submit a draft of, would suffice, and if sent here by Telegraph, or steamer might soon be in operation. The saving to Government, and the check to fraud, would both, in my opinion be as considerable as desirable.

Yours Truly
Thos Sydney Smyth
Advocate General

21 January }
1859 }

Draft Act

Whereas in Act 30 of 1858 it had been omitted to specify any time within which parties filing declarations under Section 14 of that Act shall be bound to furnish particulars of their respective claims as required by Section 20 of the said Act, and whereas upwards of six months have now elapsed since the passing

(para 8, that in his opinion, we had not "kept" the Government "duly informed" respecting Act 30 of 1858 Dr Balfour is probably, very competent as a linguist and as a judge of medical matters, and I submit he would do well to confine himself to matters which he does understand, instead of wasting the time of Government, and ill-servants by volunteering criticisms upon matters which he clearly does not understand. His reason is however for objecting to the course pursued in referring to him for information, requires further notice from me. His words will be found in

the margin. It appears to me that making ^{the margin} I could not understand them until in order to save public time, and expedite business. I went one day with the Government Solicitor to the building in the Chancery Palace where Dr Balfour holds no court, or office. as I shall probably have to do pretty often. and there saw that there was indeed but too much reason for his remark, owing however entirely to the extraordinary and very objectionable course pursued by himself. He brought up the Dewan and a Mahomedan Interpreter to the table, and proposed that every thing should be discussed and examined in their presence. to which I of course at once and decidedly

refused. I could not understand them until in order to save public time, and expedite business. I went one day with the Government Solicitor to the building in the Chancery Palace where Dr Balfour holds no court, or office. as I shall probably have to do pretty often. and there saw that there was indeed but too much reason for his remark, owing however entirely to the extraordinary and very objectionable course pursued by himself. He brought up the Dewan and a Mahomedan Interpreter to the table, and proposed that every thing should be discussed and examined in their presence. to which I of course at once and decidedly

objected, and requested him to have no one present but those whom I wished to question, and then only one at a time, without the presence of any one else but himself, the Government Collector and myself. I stated the points on which I required information, and put my questions, in a purposely low voice, but Dr Palfour too frequently replied to me, and spoke to his native subordinates, on subjects about which I was trying to enquire information secretly, in a tone that was audible over half of that enormous room, full in the hearing of persons whom he had just told me he entirely distrusted, and shewed about documents in a similarly incautious way, evincing a total unconsciousness of the necessity of caution and secrecy that I can feel quite astonished me. I believe I at last in some degree succeeded in convincing him of the necessity of great caution. which is the only thing required to obviate his above mentioned objection.

17 As regards Dr Palfour's objections in paras 26 to 30) to the manner in which copies of the particulars of claims are sent to him, his request that they may be sent to him at an earlier date, and his complaints of want of leisure for due investigation, I can only say that while I entirely sympathize with Dr

passing of the said Act, and 4000 Declarations or thereabouts have been filed under the provisions thereof, but no particulars have yet been furnished except in a very few cases. And whereas all parties who have filed such declarations have had ample notice, and full time for preparing the particulars of their respective claims, And whereas it is just and expedient that the same shall be furnished as required by the said Act without any further delay, It is hereby enacted that all parties who have filed such declarations as aforesaid shall furnish the particulars of their respective claims as required by Section 20 of the said Act within one week from the publication of this Act in the Fort Saint George Gazette [unless the Court upon special grounds shewn, shall enlarge the time for furnishing such particulars, which enlarged time nevertheless shall in no case exceed one calendar month] or else be barred from recovering the amount thereof under the provisions of the said Act.

/ True Copy /

M. Boyson

Govt Secy

Vol. 2. 6 Aug. 8th March 1859
Para 9.

In the matter of the Estate
of the late habob of the Carnatic.

Re
Various claims against the
Estate: and the operation of
act xxx of 1857.

(Copy)

Advocate General's opinion

Jan. 1859 Sept.
Re No. 1.

N^o 77.
From The Government Solicitor Madras.
To The Chief Secretary to Government.

Madras 25th January 1859

Sir,

I have the honor to acknowledge the Extract
Em. dated 24th Decr 1858 } from Minutes of Consultation
N^o 839. Political Department } noted in the margin.

I submitted same for the consideration
of the Advocate General and I have since
conferred with him frequently thereon.

I now forward for the information of
Government a copy of his opinion dated the
21st Instant.

I am in communication with the Government
Agent at Chepauk with a view to obtaining
the further information alluded to by the Advocate
General in para 12 of his opinion and as soon as
I receive it I shall resubmit the papers to the
Advocate General for his further consideration
and then address Government again on the
Subject.

I have the honor to be,
Sir,
Your most Obedient Servant,

M. J. S. J.
J. J. S. J.

Bl. 12 to Aug 28th March
Ch. 1 1867 Parag

1859 Report.

Mr May the owner
of the D. Carter is
a very fine horse -
in

from
The Government Solicitor
The Chief Secretary

Dated 26th January
Received

A
 No. 77
 1 enclosure
 38.54

Towards a copy of Mr. Adol
 General's opinion regarding the
 various claims against the State
 for late labor of the Carnation
 and advising that for Vol. is
 in communication with the Govt
 request for the further information
 attended to by the Advocate General

To be removed